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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 54.

NICHOLAS C. BENZIGER AND LOUIS BENZIGER, COMPOSING THE FIRM OF BENZIGER BROTHERS, PETITIONERS,

vs.

THE UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED MAY 20, 1903.
CERTIORARI AND RETURN FILED JULY 20, 1903.

(18,532.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 15, 1903.

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a United States Circuit Court of Appeals for the Second Circuit.

BENZIGER BROTHERS, Appellants,
vs.
THE UNITED STATES, Appellee. } (3,000.)

Transcript of Record.

Appeal from the circuit court of the United States for the southern district of New York.

Printed under the direction of the clerk.
[Stamped:] United States circuit court of appeals, second circuit. Filed Feb. 16, 1901. William Parkin, clerk.

1 At a stated term of the United States circuit court for the southern district of New York, held at the United States court and post office building in the city of New York, on the 22d day of September, 1899.

Present: Hon. E. Henry Lacombe, circuit judge.

In the Matter of the Application of BENZIGER BROS. for a Review of the Decision of the General Appraisers as to the Rates, &c., of Duties on Certain Merchandise Imported by Them per S. S. *Europe*, M'ch 24, '99.

Upon reading and filing the annexed petition of Benziger Bros., importers of the merchandise therein described, and on motion of Curie & Smith, attorneys for said petitioners,

It is ordered, that the board of appraisers at the port of New York return to this court the record and the evidence taken by them in each of the above entitled matters, together with a certified statement of the facts involved in the case and their decision thereon.

E. H. LACOMBE,
U. S. Circuit Judge.

(Endorsed:) 3000.—United States circuit court for the southern district of New York.—In the matter of the application of
2 Benziger Bros. for a review of the decision of the general appraisers, as to the rates, &c., of duties on certain merchandise imported by them per S. S. *Europe*, M'ch 24/99.—Summons to return record.—Curie & Smith, attorneys for petitioner, 44 & 46 Exchange place, New York city.—U. S. circuit court.—Filed Sep. 22, 1899.—John A. Shields, clerk.

United States Circuit Court for the Southern District of New York.

In the Matter of the Application of BENZIGER BROS. for a Review of the Decision of the General Appraisers as to the Rates and Amount of Duties on Certain Merchandise Imported by Them per S. S. *Europe*. Date of Entry, M'ch 24, '99. Entry No. 47032.

To the honorable the circuit court of the United States for the southern district of New York:

Your petitioners, Benziger Bros., being dissatisfied with a decision made on or about August 24, 1899, by the board of general appraisers designated by the Secretary of the Treasury, for and on duty at the port of New York, reviewing and affirming the decision of the collector of the port of New York as to the rate and amount
3 of duty chargeable on certain merchandise imported at said port by your petitioner as above specified, respectfully make application to the court and set forth herein the errors of law and fact complained of, to wit:

The said merchandise consists of a consignment, among other goods, of casts of sculpture imported in good faith by order and for the use of a society incorporated for religious purposes. The same was classified and assessed by said collector for duty at the rate of 35 per cent. ad valorem and 45 per cent. ad valorem, respectively, under paragraphs 450 and 97, act of July 24, 1897. Your petitioners, being dissatisfied with the said decision, gave notice to said collector accordingly, within ten days after the ascertainment and liquidation of the duties, as aforesaid, setting forth the reasons for objections thereto, claiming the said merchandise to be free of duty under par. 649, sec. 2, free list of said act.

Thereafter the said board of general appraisers, proceeding to hear and determine the questions of law and fact involved in said matters, affirmed the decision of the said collector in the premises.

And for the errors of law and fact in the decision of the said board, herein complained of, your petitioner says:

The board of appraisers erred, as matter of fact:

1. In not finding that the articles in question were casts of sculpture.

2. In finding that the articles in question are of a class which was known in commerce, in art, and the classification officers of customs of the United States on July 24, 1897, and for many years prior thereto, as statuary, specifically as church statuary.

3. In finding that the articles in question are not sculptured or otherwise produced by professional sculptors from models of
4 their creation, but are made in moulds in like manner as statuettes, vases, ornaments and other articles of china, bisque and earthenware by artisans in industrial establishments.

1. In finding that the articles in question are bought and sold as ordinary commercial articles.

5. In finding that the painting and decoration not only constitutes

the more artistic and attractive feature of the article, but also forms the chief element of the cost of production and market value.

6. In not finding that the clay model of the subject is prepared by a professional artist or sculptor from a design of his own creation.

7. In not finding that all the articles covered by the protest were specially imported in good faith for the use and by order of societies incorporated or established solely for religious or educational purposes, and in finding that any of the articles in question were imported for bargain and sale.

The board of appraisers erred as matter of law:

1. In basing their decision, wholly or in part, upon information acquired by the said board or individual members thereof, in other than their official capacity as general appraisers, and of such a character that it cannot in the nature of things be transmitted to the circuit courtt -or its consideration in reviewing the decision.

2. In basing their decision on any opinion other than that which appears in the evidence taken before the board, and which can be transmitted to the circuit court.

3. In undertaking to limit the term used in the statute "casts of sculptures" to "sculptors' models."

5 4. In holding that casts produced from rare objects of sculpture for use in museums or art institutes or elsewhere are casts from sculptures as distinguished from casts or sculpture.

5. In injecting into a decision a mass of statements purporting to be based on investigations made sixteen years ago by officers of the Treasury Department, as to articles made or imported by persons whose protests were not embraced in the decision and which were wholly irrelevant.

6. In holding that the article in question cannot be both statuary and casts of sculpture.

7. In holding that the insertion of the words "wherever provided for in this act" in paragraph 455 of the tariff act, make it obvious that it was the deliberate purpose of the Congress to exclude all articles such as petitioner's importations from free admission and to relegate them to the dutiable schedule according to their component material, and that this was done in the interest of domestic industry and of the revenue.

8. In not holding that the articles in question were entitled to free entry under paragraph 649 as casts of sculpture especially imported for the use of societies incorporated or established for religious purposes.

9. In holding the articles in question to be dutiable under paragraph 97 and 450 of the tariff act of 1897.

10. In not sustaining the protest and overruling the action of the collector.

11. In sustaining the action of the collector and overruling the protest.

6 Accordingly your petitioner respectfully prays the court to order the said board of general appraisers to return to the court the record and evidence taken by the said board, to-

gether with a certified statement of the facts involved in the above cases, and of its decision thereon; and thereupon, and upon such further evidence as may be hereafter taken pursuant to the statute in such case made and provided, to proceed to review said decision, and to determine the questions of law and fact involved in the same.

Dated New York, September 22, 1899.

BENZIGER BROS.,
Petitioners,
By CURIE & SMITH,
Attorneys, 44 and 46 Exchange Place, New York City.

(Endorsed:) 3000.—United States circuit court for the southern district of New York.—In the matter of the application of Benziger Bros. for a review of the decision of the general appraisers, as to the rates and amount of duties on certain merchandise imported by them per S. S. *Europe*, M'ch 24/99.—Petition.—Curie & Smith, attorneys for petitioner, 44 & 46 Exchange place, New York city.—U. S. circuit court.—Filed Sep. 22, 1899.—John A. Shields, clerk.

Know all men by these presents, that I, William H. Borthup, am held and firmly bound unto the United States of America in the sum of fifty dollars to be paid to the said United States of America. For the payment of which well and truly to be made, I bind myself, my heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with my seal and dated the 22nd day of September, in the year of our Lord one thousand eight hundred and ninety-nine.

7 Whereas, Benziger Bros. have applied to the circuit court of the United States for the southern district of New York, for a review of the questions of law and fact involved in certain decisions of the board of United States appraisers made upon the entry of certain merchandise imported by them per S. S. *Europe* March 24, 1899.

Now, therefore, the condition of this obligation is such, that if the above named Benziger Bros. shall prosecute said proceeding with effect and pay all damages and costs which shall be awarded against them therein, if they shall fail to make said proceeding good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

WM. H. NORTHUP. [SEAL.]

Sealed and delivered and taken and acknowledged this 22d day of September, 1899, before me.

JOHN MAXWELL,
Notary Public.

UNITED STATES OF AMERICA,
Southern District of New York.

William H. Northup, being duly sworn, deposes and says: That he does business in the southern district of New York, in the city of New York; that he is worth the sum of one hundred dollars, over and above all his just debts and liabilities.

WM. H. NORTHUP.

Sworn to this 22nd day of September, 1899, before me,

JOHN K. MAXWELL,
[SEAL.] *Notary Public.*

8 This bond is approved as to form and amount and sufficiency of surety.

Dated New York, Sept. 22, 1899.

E. H. LACOMBE,
U. S. Circuit Judge.

(Endorsed:) 3000.—United States circuit court, for the southern district of New York.—In the matter of the application of Benziger Bros. for a review of the decision of the general appraisers, as to the rates, &c. of duties on certain merchandise imported by them per S. S. *Europe*, M'ch 24/99.—Bond for costs on application for review.—Curie & Smith, att'ys for petitioner, 44 & 46 Exchange place, New York city.—U. S. circuit court.—Filed Sep. 22, 1899.—John A. Shields, clerk.

In the Circuit Court of the United States for the Southern District of New York.

In the Matter of the Application of BENZIGER BROS. for a Review of the Decision of the Board of U. S. General Appraisers as to the Rate, &c., of Duty on Certain Moulded Statuary Imported by Them, per S. S. *Europe*, March 25, 1899. Suit No. 3000.

Return of the Board of United States General Appraisers to the Order of Hon. E. Henry Lacombe, Circuit Judge, Dated New York, Nov. 1, 1899.

The Board of United States general appraisers, sitting at New York, in response to the order of the court in the above
9 matter, make the following return of the record and evidence taken by them in the above matter, and of the facts involved therein, as ascertained by them.

They state that a letter, hereto annexed as "Exhibit A," was received from the collector of customs at New York, submitting under

the provisions of section 14 of the act of June 10, 1890, the protest, marked "Exhibit B," and described as follows.

Colls. No.	Board No.	Protestants.	Vessel.	Date of entry.
8359.	50,528–F.	Benziger Bros.	Europe.	M'ch 25/99.

On June 12 and 23, 1899, witnesses appeared before the board, produced one of the statues imported, a model and a mould, and were examined in relation to the goods imported. A copy of the testimony is returned under a separate cover, marked "Testimony in suit 3000," and the statue, model and mould, being large and difficult to move, are retained in this office, marked "Exhibits 1, 2 and 3," and having the importer's name written thereon, subject to the further order of the court. The other exhibits referred to in said testimony (4 to 12, inclusive) are returned with the testimony.

In considering said protest the board also had before it certain testimony heretofore taken in relation to similar goods (35, 153–F, &c., a copy of which is returned with the testimony).

On the 24th of August, 1899, the board rendered its decision upon said protest. A copy of the opinion, known as G. A., 4533, is annexed as "Exhibit C."

10 EXHIBIT A.

Office of the collector of customs, port of New York.

JUNE 1, 1899.

Board of U. S. general appraisers, at the port of New York.

GENTLEMEN: I submit the protest of Messrs. Benziger Brothers, No. 8359, against the assessment of duty by this office at the rate of 35% ad valorem on certain so-called "casts of sculpture," imported by them in the *Europe*, March 25, 1899.

An inspection of the invoice and entry shows that the goods consist of one statue of St. Vincent of Paul, imported for the use and by the order of St. Mary's orphan asylum, located at Norfolk, Va., one statue of St. Anthony, imported for the use and by the order of Sacred Heart church, located at Bloomfield, N. J. One statue of St. Anthony, imported for the use and by the order of St. Mary's church located at East Saginaw, Mich., and two statues of adoring angels, imported for the use and by the order of St. Joseph's church, located at Dayton, Ohio. Said goods were returned by the appraiser as "church statues composed of plaster of Paris, decorated, 35%." Duty was assessed thereon at the rate above stated under the provisions of paragraph 450 of the act of June 24, 1897. Note G. A. 4137.

Respectfully yours,

J. J. COUCH,
Special Deputy Collector.

(3 inclosures.)

(Endorsed:) 50,528 F.—Custom house, collector's office, New York, N. Y.—June 1, 1899—Geo. R. Bidwell, collector.—Subject: Protest No. 8359, Benziger Bros.—Received by board of U. S. general appraisers, June 3, 1899.

11 EXHIBIT B.

NEW YORK, *June* 1, 1899.

Collector of customs, New York.

SIR: We hereby protest against your decision, liquidation and assessment of duties as made by you on our importations below mentioned, consisting of certain casts of sculpture imported in good faith, by order, and for the use of a society incorporated for religious purposes, contained in the cases or packages marked and numbered as described on the entries and invoices thereof, to which for more certainty of description, reference is hereby had, claiming the same to be exempt from duty under par. 649, free list of tariff act of July 24, 1897, and not as charged by you; and we give notice that we pay all other higher rates than is claimed above as the legal rate under compulsion, and to obtain possession of our goods. We claim that the duty exacted by you is not the legal duty to which said goods are chargeable, holding you and the Government responsible for all excess of duty exacted by you upon said goods above the legal duty.

Vessel.	From.	Date of entry.	Entry No.	If warehs. W. H. bond.	Date of liqdn.	Marks and Nos. of packages.
Europe.	Hamburg.	M'ch 24/99	47032	C.	June 1.	50,528 F.

BENZIGER BROS.
C. & S.,
Attorneys, 44 & 46 Exchange Place, N. Y.

(Endorsed:) 8359—50,528 F.—Benziger Bros.—Statuary.—Europe.—(Casts of sculpture.)—Vessel, Europe.—Entry, 1899, Mar. 25.—Liqed., 1899, June 1.—Protested 1899, June 1.—Custom house, New York, Jun- 1, 1899, received.

12 EXHIBIT C.

(21543—G. A. 4533.)

Molded Statuary.

Statuary, comprising single figures, groups "in the round" or insulated, also groups of figures and other objects in relief, known as "Stations of the Cross," molded of earthy or mineral substances known as "carton pierre," "carton romain," "stone composition," and terra cotta, painted and decorated, and known as "church statuary," is dutiable according to component material, whether imported for sale or for the use of religious or educational institutions, and is not exempt from duty under the provisions of paragraph 649, act of July 24, 1897, for "specimens or casts of sculpture."

Before the U. S. general appraisers at New York, August 24, 1899.

In the Matter of the Protests, 50365*f*–7865 and 50528*f*–8359, of BENZINGER BROTHERS against the Decision of the Collector of Customs at New York, N. Y., as to the Rate and Amount of Duties Chargeable on Certain Merchandise Imported per *Mesaba*, *Noordland*, and *Europe* and Entered January 26, February 21, and March 25, 1899.

Opinion by Tichenor, General Appraiser.

The articles in controversy consist of molded statues representing the Savior, St. Joseph, St. John the Evangelist, St. Anthony, St. Vincent de Paul, St. Patrick, Our Lady of the Sacred Heart, Our Lady of Lourdes, and other religious subjects, and of Stations of the Cross in relief, composed of mineral substances and other materials, painted and otherwise ornamented and decorated. They were returned by the appraiser as "church statues composed of plaster of Paris, decorated," and as "Stations of the Cross, composed of
13 pulverized stone, cement, and plaster of Paris, decorated, pulverized stone chief value," were assessed for duty at 35 per cent. and 45 per cent. ad valorem, respectively, under paragraphs 450 and 97, act of July 24, 1897, and are claimed to be exempt from duty as "specimens or casts of sculpture," or as "casts of sculpture," under paragraph 649 of said act.

All the hearings of these cases by the board (on February 28, and June 12 and 23, 1899), the testimony of nine professional sculptors of greater or less prominence, and of representatives of the Daprato Statuary Company, of Chicago, and of A. Da Prato & Co., of Boston, manufacturers of the same class of articles as these in question, was taken on behalf of the Government, and of a member of the firm of Benziger Brothers, the protestants, and of two representatives of the Stolzenberg Company (importers of similar articles who have pro-

tests pending before the board), was taken on behalf of the protestants.

The testimony related particularly to two statues of St. Anthony, one of St. Joseph (each holding child), and one of the Savior, each about five feet six inches in height, which are fairly representative of the merchandise covered by the protests in these cases, and were so conceded by counsel for the protestants. (See page 2, testimony taken February 28, and page 3, testimony taken June 12.) The first three are included in the importations (from Blondeau, Senart & Co., Paris) here subject of protest, but the last (from Mayer & Co., of Munich) is not included in these particular protests.

Other evidence includes illustrated catalogues and price lists (Exhibits 5 to 15, inclusive) of the Daprato Statuary Company, Chicago; A. Da Prato & Co., Boston; B. Bernardini & Co., New York (manufacturers); of Benziger Brothers, the Stolzenberg Company, Pustet & Co., and the A. Riffarth Company, New York (importers); and of Blondeau, Senart & Co., and Delin Frères, Paris, and Mayer & Co., Munich (manufacturers).

It conclusively appears from this evidence and from other
14 information possessed by the board, and we so find as facts—

(1.) That the articles in question are of a class which was known in commerce, in art, and to classifying officers of customs of the United States on July 24, 1897, and for many years prior thereto, as "statuary," specifically as "church statuary," comprising single figures and groups "in the round" or insulated, in various sizes and conventional designs, representing the Savior, the Blessed Virgin, the Apostles, saints and martyrs of the church, and other religious subjects; also groups of figures and other objects in relief, representing scenes or events in the Savior's life, and known as the fourteen "Stations of the Cross," usually in frames of wood or other material, in Gothic, Roman, or Renaissance style. They are molded of so-called "carton pierre," "carton romain," "stone composition," or of terra cotta. The first ("carton pierre") is composed of whiting or chalk or similar mineral substance, thin fibrous paper, glue, and water or oil mixed and boiled together and kneaded like dough or putty to the requisite consistency for molding. The "carton romain" is composed of plaster of Paris or gypsum, particles of flax or hemp tow, dextrine and water, mixed in like manner as the "carton pierre." The "stone composition" is a form of cement, composed of pulverized stone and gypsum or kindred mineral substance, glue, oil, or water, mixed and boiled in like manner as the "carton pierre." Terra cotta is composed of burnt clay, sand, lime, and perhaps other mineral substances, and after they are molded the articles are baked and kiln dried.

(2.) That they are not sculptured or otherwise produced by professional sculptors from models of their creation, but are made in molds, in like manner as statuettes, vases, ornaments, and other articles of china, bisque, and earthenware, by artisans in industrial establishments which also produce like objects in the same
15 manner in zinc and other substances, and usually manufact-

ure stained and painted glass windows, altars, pulpits baptismal fonts, crosses, candelabra and sanctuary lamps and candlesticks, ostensoriums, ciboriums, crosiers, censers, medals, badges, vestments, processional banners and canopies, and other articles of furniture, etc., which accord with the liturgy and conform to the rubrics of the Catholic church.

(3.) That they are uniformly described in the illustrated catalogues and trade circulars of the manufacturers and dealers as "statues" and as "statuary" (and as "Stations of the Cross"); are so designated in their invoices and correspondence, and are bought and sold, with varying trade discounts (30 per cent. and 20 per cent. and 2 per cent. in these cases), as ordinary commercial articles, the price depending quite largely upon the component material and size, but chiefly upon the painting and decoration, which consists in giving flesh tints to the exposed parts of the body, natural coloring to the eyes, hair, and beard, and the desired colors and other ornamentation to the drapery and accessories; also in their equipment, in many instances, with a brass or gilt nimbus, crown, crosier, or other ornamental emblematic device. The painting and decoration not only constitute the more artistic and attractive feature of the article, but also generally form the chief element of its cost of production and market value. For example, the "Tarif- General" accompanying the illustrated catalogue of Blondeau, Senart & Co. (Exhibit 14) quotes a statue 1.50 meters (5 feet) in height, with child in arms (such as those of St. Joseph and St. Anthony in question), in plain plaster, at *60 francs*, or in "carton pierre" or terra cotta at 130 francs, whereas the same article, in "simple" decoration (the exposed parts of the body, eyes, and hair painted in natural colors and the garments in plain colors, bordered with a narrow stripe in metal leaf or gold paint) is
16 quoted at 70 francs additional; in "half rich" decoration (the body and garments similarly painted, but the latter more elaborately ornamented with gold leaf, or covered throughout with silver leaf), at 85 francs additional; in "rich" decoration (the body parts painted in like manner, but the garments richly figured and gilded), at 125 francs additional; in "very rich" decoration (the body similarly painted, but the garments more richly bordered and covered throughout with gold-leaf designs) at 210 francs additional; in "extra rich" decoration (the body similarly painted, but the garments gilded throughout to imitate embroidery and cloth of gold), at 300 francs additional. Delin Frères quote "simple statue" of the same size in white plaster at *40 francs;* the same in "simple" decoration, at 110 francs; in "half rich," at 145 francs; in "rich," at 175 francs; in "very rich," at 195 francs; or the same in "carton romain" in "simple" decoration, at 155 francs; in "half rich," at 190 francs; in "rich," at 220 francs; in "very rich," at 240 francs; and if decorated in imitation of brocade or embossed cloth of gold, at 455 francs.

(4.) That the particular statues in question here are composed of "carton pierre," and are produced in the following manner: The clay model of the subject, of desired size, is covered by a workman

with a coating some two inches thick of plaster of Paris. When this coating has "set" or hardened sufficiently, the clay figure inside is broken up and removed, and a plaster-of-Paris mold thereof thus obtained. Plaster is then carefully forced into this mold, and when dry is taken out in the form of the original clay figure. This plaster figure, after having been carefully gone over by an artist or skilled workman to cure any defects in the molding, is in turn thoroughly covered with specially prepared plaster for the final mold. This is made in *sections*, which when dry are removed, and together form a perfect mold, and this composite *mold* becomes the manu-
17 facturer's substitute for the artist's clay or *plaster cast model* from which he (the manufacturer) produces his molded statues in unlimited numbers. In the molding process the several sections of the mold are in turn laid with the concave side upward, and have a lining of "carton pierre," one-half inch or more in thickness, carefully laid and pressed into them by the molder's hands with the aid of suitable tools. The extended arms, fingers, and other slender parts are strengthened by pieces of iron wire laid in the "carton pierre," which is then lined either with heavy paper or coarse-woven vegetable fiber cloth secured with glue. After the "carton pierre" has dried sufficiently, the several sections of the mold are removed and their contents joined together around a frame-work of wood, and a figure is thus formed, the counterpart of the original model. The statue then goes to a skilled workman called a "finisher," who, with knife or other instrument, removes any roughness resulting from the joining of the sections, cures any other defects in the molding, and smooths it down generally. It is then passed to the painter and decorator, who completes it in the style desired. The statues in "carton remain" and in "stone composition" are made in the same manner, except that the latter are uniformly lined with coarse cloth. The Stations of the Cross in "carton pierre" and in terra cotta are produced in substantially the same way (those in terra cotta, however, being kiln dried or baked after molding), and are painted and decorated in quite the same manner as the statues, the foreground and other landscape or perspective effects being painted in suitable tints or hues.

(5.) That certain of the articles in question (as specified in the invoices and as stated in the collector's letters to the board) were specially imported in good faith for the use and by order of societies incorporated or established solely for religious or educational purposes, and the remainder for barter and sale.

18 It is the practice of professional sculptors to have their original creations in clay reproduced in plaster of Paris for permanent use as models from which the objects are sculptured in marble, stone or other material. The sculptor invariably goes over his plaster cast with the utmost care, not only repairing any defects in the molding, but defining more accurately the hair, finger nails, folds of the drapery and outline generally, and, above all, perfecting the facial and general expression. These plaster-of-Paris models are known in commerce and in art as "casts of sculpture." They rep-

resent the artist's right and title to his creation, and, unlike the merchandise in question here, are not painted and decorated, nor dealt in as ordinary commercial articles. Casts in plaster of Paris are likewise produced from rare objects of sculpture, generally for use in museums or art institutes, but sometimes for reproduction by sculptors in marble, stone, etc., and are also called "casts of sculpture," but are in strict sense "casts *from* sculpture," being cast in plaster of Paris from sculptural objects, such, for example, as the high relief frieze of the Parthenon at Athens, the façade of the guild of the Butchers house at Hildesheim, the tomb of Engelbert, and other works in the Metropolitan Museum of Art mentioned in the testimony of Messrs. Stoltzenberg and Trueg.

This clearly appears from evidence in many other cases before the board and from the testimony of the professional sculptors in these cases. For example, Mr. F. W. Ruckstuhl, when asked what he considered the particular statues in evidence to be, replied:

I consider them casts made of a material I don't know anything about, from either a mold or other plaster cast which is held somewhere to be duplicated, to be cast in endless numbers—copies—and when cast to be colored and sold.

In reply to the further question as to whether they were known among artists as casts of sculpture, he answered emphatically in the negative.

19 Mr. J. M. Rhind, in reply to a question as to what were understood in his profession to be "casts of sculpture," said:

I would consider it was the cast taken from clay and only a process of working—that is, that it was the process from the clay to be put into a material that would stand until you carved it or cast it into bronze.

He also said emphatically that he did not consider the statues in evidence "casts of sculpture," and that the term "casts of sculpture" was also applied to casts of old sculpture, such as Venus de Milo and other antiques.

In answer to the question whether he considered the statues in evidence "specimens or casts of sculpture," Mr. Karl Bitter said:

I consider a cast of sculpture a piece of work produced by a sculptor and being transferred into another material in order to make it permanent.

He most emphatically stated that he did *not* consider the statues in evidence "specimens or casts of sculpture." He further testified that he considered "casts *from* sculpture such reproductions as we see in museums or find in the studios of the artists to help them and guide them—things which are reproductions, manifolded," and in effect, that the fact that these statues in evidence were painted and decorated would of itself remove them from the category of "casts of sculpture."

Mr. Herbert Adams testified that he did not consider the statues in evidence "casts of sculpture," and said:

As I understand it, the term "casts of sculpture" in the profession is understood to mean the reproduction of the artist's work in plaster

as an intermediate stage between the modeling and the clay and the final execution in permanent material.

20 Mr. George J. Zolnay, when asked his opinion as to whether the statues in evidence were "specimens or casts of sculpture," said:

When we speak in the profession of casts, we always mean plaster casts; they are in plaster cast. Plaster cast is considered the transmission from clay to plaster, so professionally we would not call these plaster casts at all.

He also testified that the fact that they were painted and decorated prevented them from being "casts of sculpture," and in reply to a further question said: "They are statutes, commercial objects; they may be cast in plaster."

Mr. Paul Bartlett testified in effect that the statues in evidence might be cast or they might be stamped, he did not know which, but that they were not plaster casts of sculpture; that the fact of their being painted and decorated was very material, as they might be "painted over and over and make a new thing;" that it was not the custom of sculptors to make such things; that "there are firms in Paris who do this thing very extensively and make models to be reproduced in certain materials differently as they like as many times as they like."

It appears from Treasury synopsis 5549, dated January 25, 1883, that on the trial of the suit of Diepenbrock *v.* Robertson, in the United States circuit court for the southern district of New York, it was proven to the satisfaction of the court that "certain images, made of some earthen substance, * * * generally known as church statuary, being representations of saints and allegorical characters," were dutiable at 10 per cent. ad valorem under the provision in Schedule N in the then existing tariff act, for "statuary." The statuary there in question was manufactured by Mayer & Co., of Munich, was molded of their so-called "stone composition" ("steinmassa"), painted and decorated, and of the same character as

21 this in question here. Mayer & Co.'s establishment (as appears from their illustrated catalogue, Exhibit 15), is not an "art school," but a manufacturing concern devoted to the production of painted and stained glass windows, church statuary—including statues of religious subjects, Stations of the Cross, Christmas cribs or the manger of Bethlehem—also church altars, pulpits, and other articles of church furniture in marble, stone, "stone composition," zinc, wood, and other materials.

According to reports of investigations made in 1883 by officers of the Treasury Department, one of whom is now a member of the board, the "stone composition" statuary of Mayer & Co. was, as a rule, made throughout by persons whose wages did not exceed from about four to seven marks per day of ten hours, or say, *six to ten dollars* per week. It is true the firm employed a chief artist and two assistants, who, it was said, received about $2,400 and $1,200 per annum (or, say, $46 and $23 per week), respectively. They were, however, employed in designing, supervising, and finishing the

higher class work, especially painted glass windows and other objects made under special orders, and gave no more than casual attention to the manufacture of the "stone composition" statuary of the class in controversy. The recklessness of that firm's representatives in testifying in the Diepenbrock case is shown by their change of front to fit the provisions of the present case. In that case, they testified that these articles were *statuary* produced at an "art school" by persons paid wages ranging from $75 to $200 per week. They now claim that the same are *not statuary at all*, but "casts of sculpture" or "plaster casts."

Paragraph 649 of the tariff act provides for "statuary, *and* specimens or casts of sculpture." The articles in question cannot be both. The evidence conclusively shows that they are known in commerce, in art, and in common speech, as statuary; have
22 been so known ever since they were articles of commerce; are not in fact "specimens or casts of sculpture," and have never been known as such in commerce or in art.

The qualifying words respecting "statuary" in the paragraph of the previous tariff act corresponding to paragraph 454 were restricted to the statuary provided for in that paragraph, whereas they are now applicable to "statuary" *wherever provided for* "*in this act.*" This is a radical change, as is also the omission in paragraph 638 of the present act of the words "statuary, casts of marble, bronze, alabaster, or plaster of Paris," which were in paragraph 585 of the previous act and in corresponding paragraphs of older acts. They make it obvious that it "was the deliberate purpose of the Congress to exclude all such articles from free admission and to relegate them to the dutiable schedules according to their component materials," and it is well known that this was done in the interests of domestic industry and of the revenue.

The plaster model and mould (Exhibits 2 and 3) mentioned in Mr. Benziger's testimony was not covered by the protests, nor were they the subject of the testimony of any of the other witnesses.

The protests are overruled (see G. A., 4137).

H. M. SOMERVILLE,
(Sd.) GEO. C. TICHENOR,
J. B. WILKINSON, JR.,
Board of Classification of U. S. Gen. Appraisers.

And for a certified statement of the facts involved in said matter, as ascertained by them, the said board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascertained by said board than such as are shown
23 by said decision and other exhibits hereto attached.

H. M. SOMERVILLE,
J. B. WILKINSON, JR.,
I. F. FISCHER,
Board of U. S. General Appraisers.

(Endorsed:) No. 3000.—U. S. circuit court, southern district of New York.—In the matter of the application of Benziger Bros. for a review of the decision of the board of U. S. general appraisers as to the rate and amount of duty on certain imported merchandise.—Return of the board of U. S. general appraisers.—U. S. circuit court.—Filed Nov. 2, 1899.—John A. Shields, clerk.

United States Circuit Court, Southern District of New York.

In the Matter of the Application of BENZIGER BROS. for a Review of the Decision of the General Appraisers as to the Rates, &c., of Duties on Certain Merchandise Imported by Them per S. S. *Europe*, March 24, 1899. No. 3000.

To the honorable the circuit court of the United States for the southern district of New York:

Your petitioners Benziger Bros. respectfully represent:

First. That a return from the board of United States general appraisers in the above entitled matter, was filed in the
24 office of the clerk of this court on the 2d day of November, 1899.

Second. That your petitioners desire to present further evidence in the above entitled matter.

Wherefore, your petitioners pray that an order be made referring said matter to one of the general appraisers to take and return to said court such further evidence as may be offered.

Dated November 22, 1899.

BENZIGER BROS., *Petitioners*,
By CURIE & SMITH, *Att'ys.*

Upon reading and filing the foregoing petition of Benziger Bros., and on motion of Curie & Smith, attorneys for said petitioners,

It is ordered, that the above entitled matter be and the same hereby is referred to General Appraiser Joseph B. Wilkinson, Jr., to take and return to this court such further evidence as may be offered in said matter.

Dated November 22, 1899.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) No. 3000.—United States circuit court for the southern district of New York.—In the matter of the application of Benziger Bros. for a review of the decision of the general appraisers, as to the rates, &c., of duties on certain merchandise imported by them per S. S. *Europe*, March 24, '99.—Petition and order for further evidence.—Curie & Smith, attorneys for petitioner, 44 & 46 Exchange place, New York city.—U. S. circuit court.—Filed Nov. 22, 1899.—John A. Shields, clerk.

25 Before the Board of U. S. General Appraisers.

In the Matter of the Protests of PERRY RYER & Co., 35,153–F; 35,317–F; BENZIGER BROTHERS, 35,087–F, 36,460–F, 34,717–F; THE STOLTZENBERG COMPANY, 36,592–F, 35,169–F, 36,996–F; FR. PUSTET & Co., 36,561–F, 35,155–F, 35,516–F; THE A. RIFFARTH COMPANY, 35,079–F, 35,070–F, 36,568–F.

NEW YORK, *February* 28, 1899.

Before General Appraiser Tichenor.

Appearances.—W. J. Gibson, Esq., for the Government; W. Wickham Smith, Esq., for the protestants.

Counsel for the importers of so-called casts of sculpture, imported for the use of religious and other societies, admits that the samples of casts or moulds, which are now in the rooms of the general appraisers, which have been examined by the witnesses, are, to the best of his knowledge fairly typical or representative samples of the class of merchandise under protest; and, admits that they are subject to the right of either party to introduce other samples, in case it shall hereafter be found necessary.

26 F. W. BRUCKSTUHL, called as a witness for the Government, having been duly sworn, testified as follows:

By Mr. GIBSON:

Q. Mr. Bruckstuhl, where is your place of business?
A. 939 Eighth avenue.
Q. Please state your profession or occupation?
A. Sculptor.
Q. How long have you been such?
A. About eighteen years.
Q. Will you please give a statement of what we call your qualifications, including your study, experience and what works of art you have produced?
A. I went to Paris in 1885; have studied in Paris about eight years in all. I have received honorable mention for work exhibited in Paris salon; I received a gold medal in Chicago—the grand medal in Chicago for a statue; was chairman of the fine arts jury at the exposition. I am a member of the council of the National Sculptors' Society, and have been vice-president of the Architectural League.
Q. I would ask you if you have examined certain figures in the other room—one of Madonna and child and the other a Christ?
A. Yes, sir.
Q. Which are painted or colored; well, I ask you first what, in your judgment, is a sculpture?

Mr. SMITH: I want to know what the gentleman is asking about; sculptor or sculpture?

Mr. GIBSON: What is sculpture?

A. There is a broad term and narrow term. In the broad sense, which you would naturally be compelled to follow, anything which has the shape or form of anything on earth is sculpture when it is made by human hands. In a narrow sense, anything which is cut with a chisel is only sculpture, in a narrow sense. The term sculpture is so wide it is difficult to define definitely. Now, you can include also bronze casts from one mould.

27 Q. Will you please state whether these two figures which I have named, and which I understand you have examined, are they specimens of casts or sculpture, in your judgment?

A. They are what I call colored statues, made in some material; I don't know what it is; it is not plaster in the usual sense of the word. If it is made of gypsum, some peculiar element was mixed in, say, of the consistency of malleability, which plaster has not got; another thing is, as they are in colored statues, not to be retouched, but placed as they are, they go under the head of statues, or in the broad sense of the word, as sculpture.

Q. Then do I understand you to say that these figures are not casts of sculpture?

Mr. SMITH: Objected to. The gentleman has given his testimony.

By General Appraiser TICHENOR:

Q. As an artist, Mr. Ruckstuhl, what do you understand to be meant by the phrase "casts of sculpture"?

A. There are two kinds, so far as we know. When a sculptor moulds a statue, first of all into clay, he must take a plaster cast to carry the subject still further, you can take a duplicate from that first, or you can take a plaster cast from marble—if you wish me to explain what I think about these statues as quick as possible——

Mr. SMITH: Objected to on the ground that the witness is here to be questioned and to answer in the usual way, not to volunteer information.

Q. What do you consider the particular articles that you have examined under discussion to be?

A. I consider them casts made of a material I don't know anything about from either a mould or other plaster cast which is held somewhere to be duplicated, to be cast in endless numbers—copies—and when cast, to be colored and sold.

Q. Then, do I understand that these are what are known
28 among artists as casts of sculpture?

A. No, sir.

By Mr. SMITH:

Q. Will you tell us why they are not known as casts of sculpture?

A. Artists regard casts of sculpture such classes of plaster casts or

clay, or marble, or bronze, as they are, which are to stand singly and alone, not to be sold in endless numbers to be exhibited temporarily in some exhibition, if you will, but may be retained for future use if you like.

Q. Then, if I understand you, if you take a number of casts of a sculpture—be taken or is taken—instead of one or two, you say that the indefinite number are not casts of sculpture?

A. They are casts of sculpture in a certain sense, of course. If you have two plaster pieces moulded or made, yes; as long as it remains a plaster cast it is regarded as a plaster cast. Just as soon as you put additional touching on that it ceases anything, or paint or ornamentation, it loses character of the plaster cast and becomes statuary in wood or alabaster or bronze, it makes no difference at all; it ceases to be an article of clay and becomes a finished thing.

Q. If you take an article which is concededly and undisputedly a cast of sculpture and painted it or decorated it or colored it——

A. Yes, sir.

Q. Then it ceases to be a cast of sculpture?

A. Yes, sir; ceases to be what we understand among artists to be a plaster cast.

Q. We are not talking about plaster casts; we are talking about casts of sculpture; now, do I understand you to say that the moment you take a cast of sculpture and paint it or decorate it it ceases to be a cast of sculpture?

A. I object to your question; your question is a trick; yes, if you paint a plaster cast it ceases to be what we understand to be a plaster cast. It becomes a finished, definite thing.

Q. I want to know whether you think a cast of sculpture
29 ceases to be a cast of sculpture as soon as it is painted?

A. Yes, sir.

Q. It ceases to be——

A. Yes, sir; that we understand among artists—a plaster cast of sculpture.

Q. I have not used the word "plaster" at any time; I am dealing with casts of sculpture, and those only. I now ask you again, so that you can answer yes or no, whether a cast of sculpture ceases to be a cast of sculpture as soon as it is painted?

A. Absolutely.

J. M. RHIND, called as a witness for the Government, having been duly sworn, testified as follows:

By Mr. GIBSON:

Q. Mr. Rhind, what is your occupation or profession?

A. Sculptor.

Q. Where is your studio?

A. 208 East Twentieth street, New York.

Q. You are a sculptor in marble and other materials?

A. Yes, sir.

Q. Will you state your qualifications in a general way?

A. I have been for the last twenty years a sculptor. I have studied in London and Paris and under my father.

Q. Mr. Rhind, did you examine two figures made of plaster or some other plastic material, in the other room, one representing the Madonna, with child, and the other a Christ?

A. Yes, sir.

Q. Will you please state whether or not in your opinion those two articles were specimens or casts of sculpture?

A. If you will define what a cast of sculpture is, then I think it would——

Mr. SMITH: I object to counsel defining what they are.

By General Appraiser TICHENOR:

Q. What do you understand in your profession as casts of sculpture?

A. I would consider it was the casts taken from clay, and only a process of working; that is, it was the process from the clay to put into a material that would stand until you carved it or cast it into bronze.

Q. In that view, of what you artists consider a cast of sculpture, would you consider these things casts of sculpture?

A. No.

By Mr. SMITH:

Q. Now, Mr. Rhind, I understand you to say, then, that within your definition of a cast of sculpture, is a cast first made by an artist, or of which a statue is to be made, is that right?

A. Out of which a statue of marble or bronze——

Q. Those are the only casts of sculpture that you recognize as casts of sculpture, is that right?

A. Yes, sir; unless you take a cast of old sculpture, that is, representations of old—such as Venus de Milo and different antiques; you see them produced in plaster, they would be cast of old sculpture.

By General Appraiser TICHENOR:

Q. I understand you to say, then, they would be a cast taken from an object of sculpture?

A. Yes.

By Mr. SMITH:

Q. You say the cast taken from the Venus de Milo or other ancient themes would be casts of antique sculpture; if a cast was taken from a wooden statue, according to your theory, that would be a cast of modern sculpture, is that right?

A. That would be a cast of modern sculpture.

Q. Will you explain to us, if you don't call these articles which you see here casts of sculpture, why you do not call them casts of sculpture?

A. Because I understand, in my mind—casts are part of the pro-

cess; they don't represent that; they don't represent part of a process; they are complete in themselves.

31 Q. Part of what process?

A. Of going into marble or bronze.

Q. You have just testified that a cast taken from an old subject would be a cast of old sculpture, and a cast from a modern statue would be a cast of modern sculpture?

A. Yes.

Q. You don't understand that those are a part of a process, do you?

A. No.

Q. How does that fit your definition?

A. You asked me if they were casts of sculpture; you didn't say whether they were casts of modern or antique sculpture.

Q. Which articles are you referring to?

A. The two figures in the other room.

Q. Well, are they casts of any kind of sculpture, whether ancient or modern?

A. I am not sure.

Q. You are not sure?

A. No.

Q. As to those casts that you spoke of that they are part of a process such as made by an artist when he is preparing to create a statue; have you ever seen those exhibits here in churches as a part of the decoration of the church?

A. No.

Q. No; do you know of any other casts of sculpture, so-called, that would be used in churches other than such articles as you have seen here to day?

A. I am not familiar with casts of sculpture that are used in churches.

By General Appraiser TICHENOR:

Q. Mr. Rhind, were these articles that you saw here this morning painted and decorated?

A. Yes.

Q. Were they hollow?

A. Yes, sir.

Q. And were what you understand to be casts of sculpture ever painted or decorated when cast hollow, like these?

A. They are cast hollow, but never painted, in my experience.

Q. Nor put on wooden frame with metal supports and all that?

A. No.

Q. Am I right when I understand you to say that what the

32 artists understand to be casts of sculpture taken from something solid like marble to be reproduced, in something solid again?

A. Yes, sir.

By Mr. GIBSON:

Q. These figures in the other room, one was made around a wooden frame, was it not?

A. I think it was; yes.

Q. With burlaps or canvas or something run over it first?

A. Yes; that would be used in a cast of sculpture, too.

Q. Do you know of any pieces of sculpture from which these two figures that you have spoken about should have been taken?

A. No.

Q. You have a general knowledge, do you, of all the well known pieces of sculpture in the world?

A. Well, I think so.

KARL BITTER, called as a witness for the Government, having been duly sworn, testified as follows:

By Mr. GIBSON:

Q. Mr. Bitter, what is your occupation or profession?

A. Sculptor.

Q. Your studio is where?

A. Weehawken, N. J.

Q. Will you please state your qualifications as a sculptor?

A. I have studied abroad; made several works here, the main gates on Trinity church; they are rather memorial gates.

Q. How long have you been an artist or sculptor?

A. Sixteen years.

Q. Mr. Bitter, I would ask you if you examined two figures made in plaster, one representing the Madonna, with child, and the other Christ?

A. Yes, sir.

Q. State whether or not in your opinion these articles are specimens or casts of sculpture, as understood among artists or among sculptors or statuaries?

A. I will have to ask for information. Am I right when
33 I make a difference between the expression "casts of sculpture" and "casts from sculpture"?

Mr SMITH: I object to the counsel testifying.

WITNESS: I wish to understand the distinction whether of or from sculpture. May I hear the tariff read?

Paragraph read to witness referring to the subject.

WITNESS: I would say that I consider a cast of sculpture a piece of work produced by a sculptor and being transferred into another material in order to make it permanent.

By General Appraiser TICHENOR:

Q. A solid substance?

A. Yes, sir.

Q. Would you consider these things that kind?

A. No.

By Mr. SMITH:

Q. Well, what do you consider casts from sculpture?

A. Cast from sculpture I consider such reproduction as we see in museums or found in the studios of artists to help them and guide them—things which are reproductions—manifolded.

Q. Do you consider these articles that you saw here to-day then, casts from sculpture?

A. Yes, I do.

Q. You think from sculpture, although according to your definition they are not casts of sculpture?

A. Yes, sir.

By Mr. GIBSON:

Q. Does the fact that they are painted and decorated, does that alter them in your opinion?

A. Yes, it doesn't make them casts of sculpture technically and professionally; I mean the expression casts of sculpture as technically given as we use it. I would not classify them as casts of sculpture.

34 HERBERT ADAMS, called as a witness for the Government, having been duly sworn, testified as follows:

By Mr. GIBSON:

Q. Mr. Adams, what is your profession?

A. Sculptor.

Q. Your studio is where?

A. 42 West Fifteenth street, New York.

Q. How long have you been a sculptor?

A. Fifteen years.

Q. Will you please state in a brief way your qualifications as a sculptor?

A. I studied in Boston and abroad; member of the Sculptors' Society of the United States; on the board of control of the National Society of American Artists and representative of the Fine Arts Federation and a member of the league.

Q. Please state if you examined two figures made of plaster or some other material, one representing the Madonna with child and the other Christ?

A. Yes, sir.

Q. Please state whether in your opinion these figures are specimens or casts of sculpture?

A. As the term is understood in the profession I don't consider them such.

Q. Referring to the profession, you mean the profession of sculptors and artists?

A. Yes.

(By Mr. SMITH:)

Q. Please state how the term casts of sculpture is understood by the profession?

A. As I understand it, the term casts of sculpture in the profession is understood to mean the reproduction of the artist's work in plaster as an intermediate stage between the modeling and the clay and the final execution in permanent material.

Q. In other words, it is part of the process of making a statue?

A. It is part of the process of making a statue.

35 By General Appraiser TICHENOR:

Q. In solid material?

A. Yes.

By Mr. SMITH:

Q. Have you ever seen such casts of sculpture as you have described for artists, cast from which the statue was to be made, exhibit in churches?

A. I don't think I have.

Q. Have you visited churches here and abroad in which you have seen casts of sculpture of the Madonna and Christ and various other scriptural themes?

A. Yes, sir.

Q. Have them been as a rule of the general class of the figures that you saw here to-day?

A. I have seen in the churches here and abroad reproductions in some material of forms not such that we considered casts of sculptures as we use the term among sculptors.

Q. I understand that these things that you have seen in churches are not the things within your definition—you understand technically as casts of sculpture; I will ask you whether the things or casts that you have seen in churches are such articles as you have seen here to-day represented by these two figures?

A. Yes, sir.

Q. Do you know of any other kind of casts of sculpture (whether the term be used correct or felicitously or not) which is used for the ornamentation or furniture of churches, other than such as you have seen here to-day?

A. You mean casts in bronze or in other material?

Q. No; I mean casts in plaster.

Objected to.

Mr. SMITH: I will withdraw the question.

36 GEORGE J. ZOLNAY, called as a witness for the Government, having been duly sworn, testified as follows:

By Mr. GIBSON:

Q. What is your profession?
A. Sculptor.
Q. Your studio?
A. 624 Madison avenue, New York.
Q. Will you please state briefly your qualifications?
A. I am a graduate of the Imperial University in Vienna. I have done a great deal of work for the National Exposition in Chicago and executed a great deal of private work in bronze, and belong to the National Art Society.
Q. Please state if you examined two figures in plaster, one representing Christ and the other Madonna?
A. Yes, sir.
Q. Please state whether or not in your opinion these figures are specimens or casts of sculpture?
A. Yes, certainly they are in plaster cast. When we speak in the profession of casts we always mean plaster casts; they are in plaster cast. Plaster casts is considered the transmission from clay to plaster; so professionally we would not call them plaster casts at all. They are casts from plaster; that is my opinion.
Q. Does the fact that they are painted and decorated change them from being casts of sculpture?
A. Certainly.
Q. Does the fact that they are made around a frame change the nature?
A. I am liable to do the same thing with mine. If it is too large I would put a frame in if it would not stand of its own weight.
Q. Do I understand that painting and decorating these changes their character?
A. They are plaster casts in the way that I understand them in the profession. They are statues, commercial objects; they may be cast in plaster.

37 By Mr. SMITH:

Q. I understand you to say they would not be considered in the profession plaster casts, but they are in facts casts of plaster, are they?
A. Yes, sir; of course. They are painted in some material.
Q. In regard to those plaster casts you spoke of, which I understand are the intermediate processes between the artist's drawings or design and the finished product——?
A. Yes, sir; certainly.
Q. Are they exhibited as works at exhibitions?
A. They are temporarily exhibited instead in case the exhibition comes before there is time to reproduce them in bronze or marble they exhibited in plaster.

Q. These plaster casts are?
A. Yes, sir.
Q. Do they ever form part of the ornamentation or decoration of churches?
A. No.
Q. You have seen these articles here in churches here and abroad and are familiar with them?
A. Oh, very.

W. R. O'DONOVAN, called as a witness for the Government, having been duly sworn, testified as follows:

By Mr. GIBSON:

Q. Mr. O'Donovan, please state your profession?
A. I am a sculptor; I have no profession. I object to the word profession as applied; it is not expressive.
Q. Your studio is where?
A. 105 East Seventeenth street, New York.
Q. Will you please state some of your qualifications in a general way as sculptor?
A. I state that I have been more or less recognized for 30 years; my qualifications I cannot state. I have done a great deal of public work, been a member of all the artistic societies, I guess, in the country.
Q. Did you examine two figures, moulded, one representing Virgin and the other Christ?
A. Yes, in a casual way.
38 Q. What is your understanding of the term specimens or casts of sculpture?
A. Why, anything that is sculpture must be a specimen of either a cast or product in sculpture in any form.
Q. Are these pieces, in your opinion, that?
A. What?
Q. Are they such specimens or casts as you have defined here?
A. I don't see what you are driving at. The question is very vague.

By General Appraiser TICHENOR:

Q. Are those moulded articles you examined what you understand to be specimens or casts of sculpture?
A. They are, necessarily; they are casts or specimens because they are sculpture. What grade of sculpture they are is another question.
Q. Are they sculpture or are they moulded articles?
A. That I could not state; not from the casual examination I made of them; presumably they are casts, I should say.

No cross-examination.

PAUL BARTLETT, called as a witness for the Government, having been duly sworn, testified as follows:

By Mr. GIBSON:

Q. You are a sculptor?
A. For 20 years.
Q. Your studio is where?
A. 229 East Twentieth street, New York.
Q. Will you please state in a brief way your qualifications?
A. Oh, well, I have studied in Paris a good many years, done a good many works, some for the Government in Washington.
Q. Did you examine two moulded figures here today?
A. Yes, sir.
Q. Please state whether or not in your opinion those figures are specimens or casts of sculpture?
A. I don't know whether they are cast; they may be stamped. They are not plaster casts, that is all.
Q. Does the fact that they are painted and decorated——
39 A. Changes the thing a great deal in fact, because it can be painted over and over and make a new thing.

By General Appraiser TICHENOR:

Q. Is it customary, or have articles such as you generally know in your profession as casts of sculpture, to be made in the way that these things are finished?
A. It is not customary for sculptors to do this kind of work, no. There are firms in Paris who do this kind of work extensively, who make models to be reproduced in certain materials differently, as they like, as many times as they like.

By Mr. SMITH:

Q. Now, Mr. Bartlett, you are not willing to swear that those figures are not casts of sculpture?
A. I am not willing to swear they are not.
Q. Are you willing to swear that they are cast if you were not willing to swear they were not casts of sculpture?
A. Of course not; I don't know.

ALBERT WEINERT, called as a witness for the Government, having been duly sworn, testified as follows:

By Mr. GIBSON:

Q. Mr. Weinert, what is your profession?
A. Sculptor.
Q. Where is your studio?
A. 218 East 25th street, New York.
Q. How long have you been a sculptor?
A. Ten years.

Q. Will you please state your qualifications in a brief way?
A. I have studied in Leipzig, in Brussels—executed several works which are in the Congressional Library in Washington.
Q. You belong to societies or organizations of your profession?
A. Yes.
40 Q. Did you examine two figures, one representing Christ, and the other a Virgin?
A. Yes, sir.
Q. Will you please state whether these figures are specimens or casts of sculpture?
A. I think they are plaster casts of sculpture.

By Mr. SMITH:

Q. Are these articles of sculpture—please leave the plaster out; are they moulded casts of sculpture?
A. They are casts of sculpture, yes.
Q. The term plaster cast which you use, is the term by which you refer to the intermediate cast which is made by a sculptor in the process of putting his artistic design or conception into the condition of a finished statue, is that right—that is what you mean when you say plaster cast and these are not those?
A. It is plaster cast from a mechanical point of view. It is from a model; it is from a mechanical point of view a plaster cast.
Q. What is?
A. A painted plaster cast of sculpture.
Q. They are painted plaster casts of sculpture?
A. Yes, sir.

PURIO PICCIRILLI, called as a witness for the Government, having been duly sworn, testified as follows:

By Mr. GIBSON:

Q. You are a sculptor?
A. Yes, sir.
Q. Your studio is where?
A. 717 East One hundred and forty-second street, New York.
Q. How long have you been a sculptor?
A. About fifteen years.
Q. Will you state your qualifications?
A. Well, I have studied in Italy, came over here, since then I have done modeling and carving. I have done most of St. Gaudens work in marble and Daniel C. French and many others.
41 Q. Mr. Piccirilli, did you see these two moulded figures?
A. Yes, sir.
Q. What do you understand by specimens or casts of sculpture?
A. Specimens or casts of sculpture?
Q. What is a cast of sculpture?
A. There are plaster casts of marble and bronze; cast is a kind of abstract name.

By General Appraiser TICHENOR:

Q. Do you call those casts of sculpture?
A. I may call them casts of bad sculpture. I know that they are cast because—I don't know whether it is plaster, it is composition.
Q. Don't you know whether it is cast?
A. No, it might be pressed.
Q. Do you know the difference between a cast and moulded article?
A. Moulded?
Q. Yes. If they were moulded would they be cast?
A. Of course, casts are moulded, I presume.
Q. Is there such a thing as a cast taken from a piece of sculpture?
A. No.
Q. Any plastic substance cast from a piece of sculpture or any thing moulded in a mould?
A. Moulds are the parts which put together form the mould or moulds in which we pour the material, plaster, bronze or any other material; moulds are the pieces which form to make a cast.

By Mr. SMITH:

Q. Well, you saw these two articles out here?
A. Yes, sir.
Q. Are you willing to swear they are not casts of sculpture?
A. I could not say cast or pressed; but if you wish to call them casts you might call them casts.
Q. Are they such articles as you have heard artists call casts of sculpture?
A. Yes, sir.

Hearing adjourned. Date to be fixed.

42 *Testimony in Suit* 3000.

Before the Board of U. S. General Appraisers.

In the Matter of the Protest of BENZIGER BROTHERS, 50528–F.

NEW YORK, *June* 12, 1899.

Before General Appraiser Tichenor.

APPEARANCES.—H. J. Webster, Esq., for the Government; W. Wickham Smith, for the protestants.

Mr. SMITH: I ask to have taken up as the test case to be decided on this question, which we claim to be perfectly fair and representative of the whole issue, protest 50,528–F of Benziger Brothers, relating to an importation by the steamer *Europe*, entered on the 25th of March, 1899, entry 47032.

Objected to by Government counsel.

Mr. SMITH: I ask to have this case taken up, considered and decided, and all others suspended (continued) to await the result and determination of the courts in this case.

Request granted to the extent of including this protest (50,528–F) with such other protest or protests as may be necessary to make the testimony available which was taken February 28, 1899, on behalf of the Government.

43 LOUIS G. BENZIGER, called as a witness for the protestants, having been duly sworn, testified as follows:

By Mr. SMITH:

Q. Mr. Benziger, what is your business?
A. Bookseller, importer of church goods—church goods business.
Q. What is the name of your firm?
A. Benziger Brothers.
Q. You are a member of the firm?
A. Yes, sir.
Q. Look at the invoice which I now show you, No. 18,099, and state whether that is an invoice received by your firm.
A. Yes, sir; this is an invoice received by us.
Q. Look at this entry, No. 47,032, and state whether that is an entry made upon that invoice.
A. Yes, sir; it is.
Q. Now, I call your attention to the second item on that invoice in case 1003, marked Statue of St. Anthony for Rev. J. Nardeillo, Church of the Sacred Heart, Bloomfield, N. J.; did you make that importation?
A. Yes, sir.
Q. And when the statue was received was it sent to that church?
A. Yes, sir.
Q. Was it imported for the use of that church?
A. Yes, sir.
Q. Was it imported on the order of that church?
A. Yes, sir.
Q. Have you that statue here?
A. Yes, sir.
Q. Did you send it here to this building?
A. Yes, it was sent here.
Q. It is now actually here?
A. Yes.
Q. You procured it, did you, from the church to which it had been sent?
A. Yes, sir.

Mr. SMITH: I offer that statue in evidence, to be marked Exhibit 1.

Q. Now, Mr. Benziger, did you also import the model of that statue?

A. We imported a model of a similar statue.

44 Q. Of a model of St. Anthony?

A. Not this same——

Q. But a model of a statue similar to this?

A. Yes, sir.

Q. Did you import the mould of the similar statue?

A. Yes, sir.

Q. And are those statues from which that model is moulded similar to the model and mould to be used for this statue?

A. Just the same.

Mr. SMITH: I offer those in evidence and ask to have the model marked Exhibit 2 and the mould marked Exhibit 3.

Statue is marked in evidence Exhibit 1, the model Exhibit 2, the mould Exhibit 3, 50,528–F, June 12, 1899.

Q. Mr. Benziger, have you been abroad and seen these statues made?

A. Yes, sir.

Q. These casts?

A. Yes, sir.

Q. Without going into very elaborate detail won't you tell us in a general way how that is done?

A. It is simply a model made first by the artist in some soft material that is made by the artist; that is then enlarged in plaster in proportion, and from that the pieces are made in material; I don't know in what material—you see the large statue is simply a statue is made by the artist, that is enlarged to the size that you want to have the statue reproduced in. From that there is some material put around that statue which is in pieces; afterwards that is taken off, whatever the statue is made of is poured into that shape—the mould pressed into it rather.

By General Appraiser TICHENOR:

Q. Now, what is done after that—the pieces are taken from the mould and joined together, are they, after it has been pressed?

A. Then it is taken out and is dried and painted.

Q. Taken out in sections?

A. As a whole piece; the whole thing is laid out and pressed in and taken out in one piece.

45 Q. How could that be done with the arms?

A. The arms, I think the arms I think joined—well, parts which cannot be they are joined.

Q. Taken out in sections and joined together?

A. As far as it is necessary.

By Mr. WEBSTER:

Q. You mean it is laid out—you say that the statue is cast or pressed into the mould by the artist?

A. They take plaster—they put material around that statue—what it is I don't know exactly—then they take that off, they take

the material, the carton pierre and press it into those pieces of the moulds, next they set it up, arms for instance, parts which cannot be pressed in it they have to be put on.

Q. Pressed into the mould by something on the inside that presses out?

A. Take this, the statue, you take this material, carton pierre, you press into the figures here (illustrating).

By General Appraiser TICHENOR:

Q. The material is in a plastic condition or like liquid?

A. It is carton pierre, is a composition, you know, partly liquid, I think it has some sloth in it, too.

By Mr. SMITH:

Q. Is it like paste?

A. Yes, sir; it has to dry afterward, it is quite soft and has to dry.

Q. Now, Mr. Benziger, I notice that this invoice is from a firm called Blondeau, Senart & Company, of Paris?

A. Yes, sir.

Q. Have you received from Mr. Senart of that firm a certificate?

A. Yes, sir.

Q. As to the character of the articles turned out by him?

A. Yes, sir.

Q. Please look at this paper which I show you and state whether that is the original certificate, and also whether the manu-
46 script paper is the original certificate, and whether the type-written paper before it is what purports to be a translation of the French affidavit?

A. Yes, sir.

Mr. SMITH: I offer that in evidence.

Mr. WEBSTER: I think it might be noted admitted for what it is worth.

Mr. SMITH: I am entirely willing anything of that kind should be noted.

Paper received for such consideration as the board thinks it is entitled to and marked in evidence Exhibit 4, 50,528–F, June 12, 1899.

By General Appraiser TICHENOR:

Q. You have been in this business a long time—your firm?

A. Yes, sir.

Q. How long have you been importing articles of this same character?

A. Oh, about thirty or thirty-five years or so.

Q. You obtained them formerly from Froc-Robert?

A. The predecessor of this firm, yes.

Q. You formerly obtained them not from Froc-Robert?

A. Yes; this firm is his successor.

Q. They make the same class of goods?

A. Yes, sir.

Mr. SMITH: I ask to have noted the oath attached to this entry in regard to free articles intended for the use of colleges, schools, &c., signed by J. M. Nardiello, pastor of the Church of the Sacred Heart, at Bloomfield, N. J. I make this specification because there are other statues in here, however, as we want the decision to apply to all. I think, perhaps, there are certificates for all the other statues. The importer makes no claim to any recovery of the first item on this invoice, being a statue of Notre-Dame de Lourdes, which was not imported for the use of a church.

Q. Now I will ask you whether the statue of St. Vincent de Paul, imported for the Sisters of Charity Orphan Asylum, of Nor-
47 folk, Virginia; the statue of St. Anthony, imported for the St. Mary's church, Saginaw, Michigan, and the Adoring Angels, imported for the Church of the Immaculate Conception, of Dayton, Ohio—whether they were articles of the same general character as the statue of St. Anthony which we have offered in evidence here?

A. Yes, sir.

Q. I mean, of course, as to their mode of preparation?

A. Yes, sir; exactly.

By General Appraiser TICHENOR:

Q. Made of the same material and in the same way?

A. Yes, sir.

By Mr. WEBSTER:

Q. On all these that you claim are here, Mr. Benziger, did you receive orders for them before you ordered them from abroad?

A. Yes, sir.

Q. Received the orders from the churches, did you, before?

A. Yes, sir.

LOUIS TRUEG, called as a witness for the protestants, having been duly sworn, testified as follows:

By Mr. SMITH:

Q. You are in the employ, I think, of Mr. Stoltzenberg?

A. Stoltzenberg & Co.

Q. He is engaged in the church goods business of similar character to Mr. Benziger?

A. Yes, sir.

Q. And prior to being with Mr. Stoltzenberg were you in the employ of Mayer & Company?

A. Yes, sir.

Q. They are in the same general line of business?

A. Yes, sir.

Q. How many years altogether have you been in business?

A. About thirty.

Q. Have you within the last month or two, at my request, paid a visit to the Metropolitan Museum of Art in this city?

A. Yes, sir.

48 Q. Have you given particular attention to that division or department of that institution which relates to sculptural plaster casts and bronze reproductions?

A. I have.

Q. Were you requested by me to make a particular examination in that art museum of casts with reference to whether or not they were colored or painted?

A. Yes, sir.

Q. Did you do so?

A. I did.

Q. What did you find with reference to that?

A. I found a great many specimens of sculpture there decorated.

Q. When you say specimens of sculpture, do you mean marble or casts?

A. No, plaster casts.

Q. Did you, as you went through the galleries and made this examination, make notes of different statues or casts that you found that were decorated?

A. Quite a number.

Q. And do you need that memorandum in order to testify on the subject?

A. Not necessarily; I guess I can.

Q. I will ask you to describe a few of the leading casts that you discovered there that were ornamented and decorated?

Mr. WEBSTER: I don't see that this is material. Because of the fact that there are decorated casts in the Metropolitan Museum does does not prove anything that I can see.

Mr. SMITH: Well, the witness- who were called for the Government purporting to be authorities on matters of art, some of them testified with more or less positiveness that when you put any paint or decoration or anything on casts of sculpture, it thereupon immediately ceased to be a cast of sculpture, and while such testimony might be considered so absurd as not to require any refutation, nevertheless, I desired to refute it.

(Witness referring to memorandum.) I found a model of the Parthenon at Athens; and there is a frieze on the top wall
49 which extends all around the building. This frieze is in high relief, the statue, of course, sculpture and colored.

Q. Let me ask you, when you say sculpture, you mean casts, do you?

A. Yes, it is a cast.

By General Appraiser TICHENOR:

Q. State what it is made of or how it is cast?

A. It is in plaster.

Q. How did you ascertain that fact?

A. Well, from my knowledge of the affair, and also I was told by Dr. Paine, the curator of the Metropolitan Musuem of Art, he told me.

By Mr. SMITH:

Q. Didn't you know whether a thing was a cast without being told?

A. He volunteered to tell me.

Q. About this frieze which was painted?

A. Yes, sir.

Q. How many classes, more than one?

A. Oh, yes.

Q. You remember what it represented?

A. Represented the scene of Hercules. Then there is the model of the façade of the Guild of the Butcher's House, Hildesheim. I found this to be a specimen of sculpture or casts. It is entirely colored in various colors throughout.

By General Appraiser TICHENOR:

Q. What is it made of?

A. Cast of sculpture. Then there is the pulpit that is in the church of Santa Croce, in Florence, very large and fair, this is also a cast and colored. There are certain statues in relief standing in niches around it. Then I find a statue of Saint David, a cast of sculpture bronzed.

By Mr. SMITH:

Q. What do you mean by bronzed?

A. It was a cast, a plaster cast bronzed.

Q. And colored to imitate what?

A. Bronze.

50 Q. Did you find any other casts of elaborate carved doors colored to imitate wood?

A. Very many of them.

Q. What else?

A. The reverse panels in the screen, 28 in the same department are all decorated, door panels and all sorts of panels. Then there is a shrine of Saint Ubalders, Nuremburg, also made of plaster and decorated throughout and gilded.

Q. These articles that you saw are all publically exhibited in the galleries?

A. They can be seen, of course.

Q. Are there any more?

A. There is the statue of the Assumption of the Virgin by Luca Della Robbia, in the Marquand collection, highly decorated plaster cast; there are numerous others.

Q. Did you yourself take orders from churches and pastors for these casts?

A. Yes, sir.

Q. Your house imports them of the same character to these of Mr. Benzinger?
A. Yes, sir.
Q. And has protests pending here?
A. The same way, yes.
Q. Duty exacted on them?
A. Yes, sir.

By General Appraiser TICHENOR:

Q. These articles, I understand you that you saw in the Metropolitan Museum, were cast in solid plaster?
A. Yes, sir.

By Mr. WEBSTER:

Q. I believe you spoke of a statue of Saint David and a statue of the Assumption?
A. Yes.
Q. Now these other things that you spoke of were all architectural works?
A. They are practically a relief work, sculptural work.
Q. Take the Parthenon, that is an imitation of the original Parthenon at Athens, is it?
A. Yes, sir, so I understand.
Q. And has some relief sculptural work on the roof?
A. Under the gable all around the entire building, and I
51 think the original is 540 feet long all together, it is one large frieze.
Q. That article as a whole there is not a statue?
A. Oh, I don't bother, it is a statute or not.
Q. It is not a statue but it is relief work?
A. It is relief work certainly.

F. STOLTZENBERG, called as a witness for the protestants, having been duly sworn, testified as follows:

By Mr. SMITH:

Q. Mr. Stoltzenberg, what is your business?
A. Well, I import here some statues from my own shop in Holland where I make statues. I have done that about 12 or 15 years. I have some here in the Metropolitan Museum, some in Vienna, in Berlin, in Nuremberg, you will find all my casts.
Q. Mr. Stoltzenberg, you say you have made casts?
A. Yes, sir.
Q. Of sculpture?
A. Yes, sir.
Q. And have been doing so for how many years?
A. About 12 years, I make ordinary casts for sculptors for churches to make them about 40 years in Rome, and in Holland.
Q. Well, you say that some of the casts made by you have been purchased for the Metropolitan Museum of Art?

A. Yes, sir.
Q. Mention the subject of one of those casts?
A. The tomb of Engelbert.
Q. Of what material is this cast made?
A. Plaster.
Q. Referring to this picture, which I hold in my hand, I ask you what was the base upon which this statue was placed?
A. Black marble; they make the cast and paint them black.
Q. The base on which this statue was placed was cast, was it?
A. Cast.
Q. It was cast and it was painted black, was it?
A. Black.
52 Q. Cast of plaster was it and painted black in order to represent the black marble of the original?
A. Yes, sir.
Q. I notice that the four persons at the corners are supporting on their shoulders a what?
A. A tablet.
Q. Was that painted?
A. Painted.
Q. What color?
A. Black.
Q. Because the original was black marble, was it?
A. Black marble.
Q. Now, did you bring that cast to this country?
A. Sure.
Q. What did you do with it after you got it here?
A. Put it in the Metropolitan Museum.
Q. Was it purchased by the museum?
A. Yes, sir.
Q. Is it there yet?
A. Yes, sir.
Q. On exhibition?
A. If it is not mounted it goes in the new building.
Q. It is among the casts that are down in the lower part of the structure until the new building is completed, is that right?
A. Yes, sir.
Q. Now, I understand you to say that you had supplied casts to various art museums in Europe, that right?
A. Yes, sir.
Q. Now were any of those painted?
A. Sure.
Q. What color?
A. Well, different colors; they make some casts highly gilded, enameled.
Q. Have you seen those casts after you supplied them?
A. I know they are there, my name is right on it.
Q. Have you visited these museums after sending them there?
A. No.
Q. Have you supplied them to museums?

A. I see them in Belgium, in Berlin, Amsterdam; I have seen them there.

Q. You have supplied casts to art museums and galleries in Belgium and Amsterdam?

A. Yes, sir.

Q. And have you seen them exhibited in those museums?

A. Yes, sir.

53 Q. Were they gilded?

A. Some of them, colored also.

Q. Have you, yourself, made such articles as these casts of the statue of Saint Anthony that Mr. Benziger has imported here?

A. Yes, sir.

Q. Are they made in a mould?

A. In a mould.

Q. Is it usual to decorate them as they require to be decorated?

A. Yes, most of them.

Q. Do you import, yourself, on orders from churches?

A. Sure.

By Mr. WEBSTER:

Q. Mr. Stoltzenberg, have you protests here on importations of your own?

A. Yes, sir.

Q. Have you examined this statue of Benziger Bros. that is here?

A. No.

Q. Do you know that there are two or three or four methods of manufacturing these statues?

A. Yes, sir.

Q. You don't know then whether this statue of Benziger's has been made in the same way that you make yours, do you?

A. Carton pierre is made in the same way; I make my own of the carton pierre.

Q. If it is carton pierre then it is the same as yours?

A. Yes; sir.

Q. About what size was this tomb of Engelbert which you made?

A. Just the same as the original. The statue is more than life size, it is a reproduction from the original.

Q. Was this cast all in one piece or separate pieces?

A. Every statue is cast separate.

By General Appraiser TICHENOR:

Q. Each piece, as I understand it, is cast separate?

A. Sure.

Q. Are they cast of solid plaster of Paris?

A. Plaster of Paris.

Q. Are they solid?

A. Yes, plaster of Paris, then we put in some cotton to make it stronger; the material is always plaster of Paris.

54 Q. The figures there, as I understand it, in that article which represented the tomb in the museum, are white?

A. The original was white marble, therefore the statue was white.

Q. The base or plinth, or whatever it is, is black and the upper part of the tablet to match the marble?

A. Yes, sir, also black.

Q. Now, Mr. Stoltzenberg, when you say there are different methods of making these moulded figures, church articles, do you refer to the different kinds of material, or to the different methods of producing them? Ain't they all produced in the same way?

A. All produced in cast—in moulds.

Q. From models?

A. From the models.

Q. The difference then is in the material, not in the method of producing?

A. Nothing at all, all cast.

Q. As I understand you, the method of the producer is briefly this: The artist makes a model, small model in clay, to begin with?

A. If you like to do it you can, but ordinarily make a small one, if it looks good, if the position is good after the small model is made then we make it larger, then it gets bigger.

Q. To the desired size?

A. Yes, you can make in the beginning a small one.

Q. You make a cast from that?

A. From the large one.

Q. Then you make the moulds from the casts?

A. Yes, sure.

Q. These articles that you import are articles made in the moulds?

A. Yes, sir.

Q. Made in sections, are they?

A. It depends on the statutes; if you have a statue in that position you can (illustrating).

Q. When you make it with folded arms you can make it all solid?

A. Yes, sir.

Q. How about the ears?

A. That makes no difference, you could make them in the mould, yes.

Q. How can you get the shape of the ear?

55 A. You are supposed to make the face, the mould is made in about six or seven different pieces.

Q. These statues, moulded articles, are thin, are they not; they are hollow?

A. Hollow, sure.

Q. Put on a wooden frame, generally?

A. Yes, wooden base.

Q. Something to strengthen the body, and you line them with paper?

A. In cotton to make it solid.

Q. Small pieces of iron are run into the material?

A. Small pieces put in to make it solid, you know.

By Mr. WEBSTER:

Q. What is the condition of the material when you put it into the mould? Is it thin so that it will pour in?

A. The first thing you put in the mould is liquid so it goes in every small place, then after that you put in the carton pierre, I make the ordinary with plaster, dextrin and cotton.

Q. The mould is not poured full of liquid, as I understand it?

A. The beginning.

Q. It is not poured full of that liquid, you put in a little liquid to fill up the small places?

A. That is the mould we make plaster from liquid like water, thin; then you put your other plaster into the top of that.

Q. Then you put some cotton on top of that?

A. Yes, to prevent breaking,

Q. And press that into the mould so that the inside is hollow?

A. Yes, it goes in the mould.

Hearing suspended. Exhibits 1, 2 and 3 examined by the board and witnesses.

F. STOLTZENBERG recalled:

By Mr. SMITH:

Q. Mr. Stoltzenberg, since you gave your testimony this morning have you examined the statue of Mr. Benziger in question here?

A. To-day, yes, sir.

56 Q. And you found it to be of the same general character as those that you import?

A. Yes, sir.

Q. And made in the way that you described?

A. All cast.

(Protestants rest.)

JUNE 23, 1899.

Hearing resumed.

Present: Same as before.

L. L. GROMBACHER, called as a witness for the Government, having been duly sworn, testified as follows:

By Mr. WEBSTER:

Q. Mr. Grombacher, what is your business?

A. I am traveling salesman for the Daprato Statuary Company, Chicago.

Q. How long have you been engaged in that business?

A. With this particular firm?

Q. Well, in the same line?

A. Nine years.

Q. How long have you been in that line of business?
A. About 14 years.
Q. Have you looked at the exhibits in this case?
A. I have.
Q. Will you please state whether your firm handles the same kind?
A. We manufacture similar goods.
Q. You sell the product of your factory, do you?
A. I do.
Q. Where do you sell it, in Chicago or all over the country?
A. All over the country.
Q. All over the United States?
A. All over the United States.
Q. Have you a catalogue of your firm with you?
A. Yes, sir; this is a catalogue of our firm.

Catalogue produced.

57 Q. Do you know when this catalogue was printed or issued?
A. It was issued in—about 1898.
Q. Is there any substantial difference between the 1897 catalogue and this?
A. 1897, I would no- say positively.
Q. Is there any difference between this catalogue marked No. 6 and the previous catalogues issued by your people?
A. No, except we have more designs in this one; this consists mostly of photogravure, while our previous one consisted more of wood cuts. It is a larger edition than our former one.
Q. Is this a regular trade catalogue issued for the purpose of taking orders from?
A. It is.

Mr. WEBSTER: I offer this catalogue in evidence to show that the articles of this kind are commercially known as statues or statuary, so far as it refers to the goods by the names statues or statuary.

Q. Mr. Grombacher, when you take orders for these goods, or offer them for sale, by what name are they generally designated?
A. As statuary.
Q. Ever hear them called by any name other than the specific titles of statues?
A. Well, as composition statues.
Q. Ever call them casts?
A. No.
Q. Did you ever hear anybody in the trade refer to them as casts?
A. Not religious statues that I know of.
Q. Are you familiar with the process of manufacturing these goods?
A. I am, some.

Q. Do you do it yourself, or only familiar in a general way? You have seen it done in your factory?

A. Yes, sir.

Q. Will you please describe, as far as you know, how they are made?

A. They are made in pieces, then put together, and after they are put together they are finished off and painted.

Q. Are they all made in separate pieces, or do you occasionally have some that are made in one piece?

A. There is very few statues that are not *made in pieces.*

58 Q. *Well,* how is each piece made?

A. It is made in a mould.

Q. Is it made by simply running the material into the mould and allowing it to harden, or by some other manipulation?

A. There is different modes, different compositions are made in different ways.

Q. Well, referring to these statues that you have examined this morning, can you tell how those are made?

A. Well, I have seen similar that is called carton romain or carton pierre.

Q. Are these that you have seen this morning made by simply running the material into the mould and allowing it to harden, or must something else be done?

A. As much as I know, yes, sir, certainly their might be different ingredients.

Q. What I want to know is whether they must do something with their hands or with some tools in addition to pouring in the material into the mould?

A. They have to press it in with knives—have to press in the canvas into the mould.

By General Appraiser TICHENOR:

Q. I understand that the material that these are made of is in a plastic condition, something like dough?

A. Some of it is; there is different ones over there you know.

Q. You think they are made in different ways?

A. I know they are made in different parts and then set together.

Q. Lined with a piece of cloth?

A. Yes, sir; burlap.

Q. That is pressed in with the hands or with a tool into the small places in the mould?

A. Yes, sir.

Catalogue referred to is marked in evidence Exhibit 5, 50,528 F, June 23, 1899.

By Mr. WEBSTER:

Q. Are some of these statues made with one body and with different heads or other parts?

A. Sometimes they are made that way.

59 Q. So that one model is made to answer for the body of two or more statues?

A. Yes, sir, that is sometimes done.

Q. And some modifications made?

A. In changing the position of the hands and——

Q. Will you please say whether there are any of that sort in your catalogue there, and refer to them by page (Exhibit 5)?

A. On page 47 we have changed the position of the hand.

Q. The two outside statues?

A. *Number 147 and 144.*

Q. Those two are made from the same model, are they?

A. The same model, only the hands are changed.

By Mr. SMITH:

Q. Have you been at the establishment of Blondeau, Senart & Co., of Paris?

A. Have I what?

Question read.

A. Not that I know of.

Q. Have you ever seen them make their statues?

A. I have not.

Q. When you say that sometimes the same body and model is used for different statues, as you call them, with a change of the head or the hands, you are referring to the manufactures of the Daprato Statuary Company of Chicago?

A. Yes, and there is another I will show in another catalogue where the same thing is done.

Q. You don't mean to testify of your own knowledge that any such thing is done by the Blondeau, Senart & Co., of Paris?

A. No; I have not seen their catalogue.

Q. Have you ever seen these statues made anywhere in Europe?

A. I have.

Q. Where?

A. I have seen them in places in Paris; I cannot recall exactly the name, you know.

Q. You don't remember the name?

A. No.

Q. You saw statues actually being made?

A. I have seen them made; yes, sir, in moulds.

60 Q. You saw them being put into the moulds and being taken out of the moulds?

A. Yes, sir.

Q. Now, you have never been engaged in making statues yourself, have you?

A. No.

Q. Or in designing them?

A. No.

Q. You are not an artist?

A. No.
Q. Your connection with this kind of articles consists simply in selling it?
A. Yes, sir.
Q. Now you say you have been selling for this Daprato Statuary Company for nine years?
A. Yes, sir.
Q. Where were you before that?
A. With C. Hennica & Co., Milwaukee.
Q. Did they make their own statues?
A. They did.
Q. Have you ever been engaged in buying or selling statues or casts of sculpture imported from Europe?
A. I have; yes.
Q. Imported from Europe?
A. Yes, sir.

Mr. WEBSTER: It is immaterial whether he has dealt in foreign statues.

(Mr. SMITH:)

Q. When and for whom, whose manufacture?
A. I have bought for C. Hennica & Co., Milwaukee, bought some statues which we used as models.
Q. Where?
A. In Paris.
Q. How many years ago?
A. It was in 1889.
Q. How many?
A. I could not answer how many I have got.
Q. Did you make them in one purchase?
A. Bought it in different—two different places.
Q. Did you go abroad to purchase them?
A. Yes, sir.
Q. Is that the only time that you bought or handled imported statues?
A. That is the only time; that is, I am speaking now of religious statues.
Q. Does your company manufacture any marble statues?
A. How is that?

Question read.

A. We sell marble statues. I don't know whether this has. I refuse to answer this question.
61 Q. On what ground?
A. On the ground that it has nothing to do with the composition statues. I ask that question. It has nothing to do with what is in question.

General Appraiser TICHENOR: On the ground that you don't care to expose your firm's business.

(Mr. SMITH:)

Q. How do you know what is in question?
A. Yes, I understand, I was posted on it—I was told—I was informed.
Q. By whom were you posted?
A. I am not posted, I was informed.
Q. By whom?
A. By Mr. Webster.

By Mr. WEBSTER:

Q. Did you look at the samples I showed you in this case?
A. I did.

Mr. SMITH: I suggest that this gentleman withhold his examination until I get through with mine, in order that we may proceed in an orderly manner.

By Mr. SMITH:

Q. I call your attention to this catalogue, which has been put in evidence (Exhibit 5), to the following:
"We can execute here, or have made by our European house, statues of any subject and size that may be ordered, and at prices nearly as possible, consistent with our regular list. Such figures can be made from casts, paintings, photographs, or even from verbal descriptions, or alterations can be made in pose or drapery from existing types." Will you be good enough to tell me what you understand to be the meaning in that sense of the word "casts"?
A. We mean if we are furnished by a sculptor with the design we can cast direct from a mould from a model that is a plaster cast.
Q. That is what you mean here when you speak of making them from casts?
A. Yes, sir.

62 By General Appraiser TICHENOR:

Q. If you are furnished with a design you could have it reproduced abroad, is that it?
A. Abroad or anywhere where we manufacture.

By Mr. SMITH:

Q. Do you understand the term "casts" to be restricted to articles that are made of plaster?
A. Well, what I understand a plaster cast to be, a cast as such is a plaster cast not painted, just new in its crude form, you know.
Q. I am asking if you understand "casts" to be restricted to articles of plaster?
A. No; it might be a cast made of bronze.
Q. Then you include bronze casts in the term casts, do you?
A. In a certain way I might.

Q. Whether you might or might not, do you?
A. I don't know whether I can answer that question.
Q. All right, that's enough. Now, do you apply the term "casts" to anything that is made in a mould?
A. No, not all.
Q. You don't?
A. No.

By Mr. WEBSTER:

Q. When you said that expression in the catalogue meant when you were furnished with the cast, the statue would be made from it, did you mean that the cast that was furnished would be used as the material of the statue or did you——
A. As a model.
Q. And the statue would be made from different material following the design of the cast?
A. Yes.
Q. Mr. Grombacher, will you look at this book and tell me what that is if you know?

(Book handed witness.)

A. Yes, Stoltzenberg's catalogue.
Q. Have you frequently seen the catalogue?
A. I know that that is issued by that firm; they send it out. I suppose it must be issued by them.
63 Q. Referring to your former testimony about statues being made from one model with certain changes in detail, will you please say if you see any in that catalogue.
A. I see one here, number A 1021 and A 841 (pp. 47–47) are identical only the change in the pose of the hands, one holding a miter and the other holding a pen.
Q. Does that appear from the cuts there that it is the same except in that?
A. Yes, sir, appears in the cuts that they are the same.

Catalogue offered in evidence and marked Exhibit 6, 50,528–F, June 23, 1899.

Q. Please look at this book and say what that is if you know?
A. This is from parts not pertaining to the statuary.
Q. That was not done then with any reference to this cast at all?
A. No.

Mr. WEBSTER: I offer that in evidence also for the purpose of showing that this statuary was known in the trade as statuary.
Same marked in evidence Exhibit 7, 50,528–F, June 23, 1899.
Mr. SMITH: I ask to have noted on the record here that any evidence on the subject of commercial designation is utterly immaterial in this case because the words used in the statu-e are not commercial terms or descriptive terms, and the question whether these articles are commercially known as statues or statuary is wholly irrelevant.

By Mr. WEBSTER:

Q. Please look at that catalogue and say what that is?
A. That is C. Bernadini & Co.'s catalogue.
Q. Is that a catalogue of church statuary?
A. That is a catalogue of church statuary; yes, sir.
Q. Do those cuts there appear similar to the samples you have looked at this morning?
A. They appear to be similar.

Catalogue offered in evidence. Same marked Exhibit 8, 50,528–F, June 23, 1899.

64 Mr. SMITH: I object to this record being lumbered up with a lot of catalogues of this kind; I cannot see the slightest relevancy to them.

Mr. WEBSTER: They show that similar statues are always advertised for sale either as statues or as statuary and never as casts. And as any evidence in regard to the commercial designation could be as to the general usage, the more evidence on the same point that is introduced, the more valuable it is.

General Appraiser TICHENOR: Let them go in.

By Mr. WEBSTER:

Q. Please look at this catalogue and say what it is?
A. This is F. Pustet & Co.'s catalogue.

Same offered in evidence. Admitted and marked Exhibit 9, 50,528–F, June 23, 1899.

Q. Were the portions that were cut cut with any view to using this catalogue in this case?
A. Not that I know of.
Q. Please look at this book and say what that is?
A. This is A. Riffarth's catalogue.
Q. Are there any parts cut away from that?
A. Yes, there is one here.
Q. Do you know whether that was done with any reference to this case?
A. No.

Catalogue produced marked in evidence Exhibit 10, 50,528–F, June 23, 1899.

By Mr. SMITH:

Q. Does your concern prepare and sell Stations of the Cross?
A. We do.
Q. What are they?
A. What do you mean?
Q. What do they typify or represent? Give an idea of what they are?

Objected to on the ground that they are not in this case.

WITNESS: I don't know what the gentleman is driving at.

65 (Mr. SMITH:)

Q. These things that are called Stations of the Cross are groups of figures representing various scenes in the life of Christ, are they not?

A. They are.

Q. Now, these articles that you have been shown here in these various catalogues, in the trade handling and dealing in them are called statues representing either one figure or the figure of the Madonna with child, or saint with child or with prayer book or——

A. And groups.

Q. How many such would you call a group?

A. Call a group—holy rosary.

Q. Have you noticed any as you went through these catalogues?

A. Yes, I have seen it in our own; there is a group.

Witness calls attention to statue 92 on page 33 in Exhibit 5, representing Jesus in the Garden of Olives.

Q. These articles shown here generally are the articles called statues, are they?

A. They are.

Q. Are there any Stations of the Cross in your catalogue?

A. There are.

Q. Won't you call attention to the page on which they appear?

A. Pages 55 to 58 (Exhibit 5) are the Stations of the Cross.

Q. I notice, referring to them, that you have on page 55 explanations or decorations?

A. Yes, sir.

Q. The first paragraph of which is: "Our statues are quoted with four different prices, representing so many distinct styles of decoration, as indicated below." And then on the first page of your catalogue we say: "We pride ourselves on the fact that our statuary is of the highest excellence in outline, color and finish, and is marked by a pure devotional expression."

(No answer.)

By General Appraiser TICHENOR:

Q. You don't recall, I understood you to say, Mr. Grombacher, the firm or firms whose places you visited in Paris, you spoke
66 about in your business?

A. Yes.

Q. Can you recall the street, was it Rue Bonaparte?

A. That I have visited.

Q. Yes, where you bought statuary?

A. Well, we bought through an agent that is called a commissioner. We went right direct to the place; one was Froc-Robert. I could not tell you the exact street where it is.

By Mr. WEBSTER:

Q. Are these Stations of the Cross always in relief?
A. Well, them that we sell are high relief, the grouping of statues.

ANTONIO DA PRATO, called as a witness for the Government, having been duly sworn, testified as follows:

By Mr. WEBSTER:

Q. Mr. Da Prato, what is your business?
A. Statuary business.
Q. Religious statuary business?
A. Yes, sir.
Q. Where is your place of business?
A. Thirteen and 14 Waverly house, Charlestown, Mass., and 2 Front street.
Q. Are you a manufacturer or dealer or what?
A. I am dealer and manufacturer also.
Q. You make and sell both, do you?
A. Yes, sir.
Q. Are you a member of a firm?
A. Yes, I am the head of the firm.
Q. Are you related or have any connection with the Da Prato Statuary Company of Chicago?
A. No, sir.
Q. The house represented by the last witness, Mr. Grombacher?
A. No connection at all, go under same name but have no connection whatever.
Q. Do you sell the statuary that is made in your factory?
A. Yes, sir.
Q. Where?
67 A. Thirteen and 14 Waverly block—we sell all over the country—anybody come to our place.
Q. Have you looked at the exhibits here this morning in this case (Exhibits 1, 2 and 3)?
A. Yes, sir.
Q. Do you make and sell statuary that is similar to those?
A. Yes, sir.
Q. Under what name do you buy and sell that kind of goods?

Mr. SMITH: Objected to; first, it is incompetent to ask what he buys as when he testified that he makes his own goods, and second, it is wholly irrelevant.

(By Mr. WEBSTER:)

Q. I will ask him first, do you buy any of this sort of statuary in the market?
A. We make everything ourselves; I have a sculptor, I have a painter.

Q. According to your own experience and knowledge in the business, under what name is statuary of this class generally bought and sold in the United States?

A. What we call romain carton and carton pierre.

Q. Never mind about the material that it is made of. What are the things called?

A. Statuary, all I know.

Q. Did you ever hear them called casts?

A. Never called casts, religious statue never and sold anything under that name in either.

Q. Do you make any casts?

A. We make some plain plaster casts. I have also an art department; we have a special catalogue for it.

Q. Are you familiar with the process of manufacturing these goods?

A. Yes, sir.

Q. Are you familiar with the process of manufacturing church statuary?

A. Yes, sir.

Q. Of plaster or composition?

A. Yes, sir.

Q. Can you tell from your inspection of the samples here this morning, how they were made?

A. Yes, sir.

Q. Will you please describe the process of making those, so far as you can from looking at them?

68 A. That broken statue, that is what they call carton pierre, perhaps make it up something like pudding; we handle that in a way that can be handled, well, handle, comes mud, to make it nice and smooth then we put it right inside, you know.

Q. Inside of what?

A. The mould, then begin to press.

Q. Press it out into the shape of the mould?

A. We take all the drapery—nose and ears—then we have to press everything in, because if you don't you don't press that right inside, then when you take the mould out it won't make an impression. Then after that we take a wood frame—after that carton pierre or papier mache, some would call—then we put right inside of that, put some kind of cloth all over the body it don't shrink, I leave it there and take it out hard; some part might stick in you know.

Q. Is wood put in to strengthen it?

A. Yes, sir.

Q. What color is it when it comes out of the mould?

A. We make that in different colors; sometimes we use different thing, too; use some glue, you know.

Q. Use some glue?

A. Yes, we use some what you call white lead, use oil—make up paste.

Q. When it comes out of the mould is it all one color all over?

A. Pretty near; sometimes might be a little place, but generally all one color.

Q. What do you do with it then?

A. We leave it there for several days until that is very set, then well, we give it to the painter and the painter begin to paint, paint them up and do all the decoration. All the statues generally come from Paris, Froc-Robert. We use burlap cloth, that is something like cheese cloth only coarser, we make that, you know—we put it in plaster, mix dextrin to make it come hard; we put that in the mould, in the open mould, cast that in the open, then we put a second cut in the burlap, take that burlap in that position and press that burlap all over the body in every part.

69 Q. You have an open mould made in two pieces?

A. Yes, sir.

Q. You put one cut of plaster or composition in the mould?

A. In the first cut we use only that.

Q. You put one cut on the cloth; one or two cuts?

A. Sometimes two cuts on the cloth, the thickness of the cloth.

Q. Then you press the cloth into the mould on top of the cut composition or plaster that is already in the mould?

A. That cloth is mostly mixed up, we make that composition in the big mould, we take that cloth and dip it in, we open the cloth around and put it inside.

Q. Are those statues sometimes made in separate pieces?

A. Generally all done that way.

By General Appraiser TICHENOR:

Q. Made in separate pieces and put together?

A. Yes, sir.

By Mr. WEBSTER:

Q. Will you please look at this pamphlet and tell me what it is? your catalogue, ain't it?

A. That is my catalogue; yes, sir.

Q. Do you know when this catalogue was issued?

A. I don't remember; three years ago, I think.

Q. Was it during the year 1897, as marked?

A. It might be.

Q. Well, did you have other catalogues before you got this one out?

A. Well, we had one little thing—don't amount to much anyway, you know.

Q. In that former catalogue, by what name were articles similar to those you have seen this morning here known?

Objected to as wholly irrelevant.

Catalogue offered in evidence; same marked Exhibit 11, 50,528–ZF, June 23, 1899.

Q. This is a similar circular that you sent out, is it (handing witness circular)?

A. Yes, sir.

70 Mr. WEBSTER: I offer that in evidence for the same purpose.

Same objection.

Circular referred to marked in evidence Exhibit 12, 50,528–F, June 23, 1899.

By Mr. SMITH:

Q. Mr. Da Prato, how long have you been in the United States?

A. I am here since 1883.

Q. How long have you been engaged in this business?

A. Since I come; since that time I come directly to Boston. I started in Boston in that business, in art goods, then I started in religious statuary in 1891–'92, you know.

Q. Do you say you started to make religious statuary in 1892?

A. Yes, sir.

Q. How is it in the catalogue, issued for the first time in 1897, you state: "We beg leave to call your attention to the new department which has been recently added to our establishment, for the exclusive manufacture or ecclesiastical statuary"?

A. We don't make them in one day. I was busy in the art goods. I started out a little at a time—got to take quite a time. I don't publish anything until I have something to show—have to engage a painter in 1892; engage a modeler in 1892. You see, then, I have no money enough to start them up in a single year a large business, and publish and print out a catalogue as some big people do, because if you have enough money as anybody else do with a big establishment in a short time. I don't have much money to start on, still I content myself to go a little at a time.

Q. You were asked by the counsel on the other side about the way you made these at your factory. Is that what you call it, a factory, where these are made?

A. Yes, sir.

Q. Now, what do you make your statues out of?

A. As I told you here a moment ago.

71 Q. Do you make it out of plaster?

A. Plaster, dextrin, burlap.

Q. Do you make them out of stone composition?

A. Stone composition—somebody call stone composition that same thing, you know, that come hard.

Q. Do you recognize any distinction between plaster and stone composition, or do you consider them the same thing?

A. Plaster alone cannot be called stone composition if you put something in the composition, you know. I sell some goods—some composition just as strong as stone; it is just as strong if you take plain plaster.

Q. Whether they are made out of plaster or stone composition, or whatever material, they are cast in a mould?

A. They are; press it, as you call it.

Q. They are put in a mould and come out hard?
A. Well——
Q. Is that right?
A. Come out hard, certainly.
Q. When you put anything in a mould and take it out hard, that is what is called casting?
A. I don't know much about that; I don't know what you call that kind.
Q. Do you make stations?
A. Yes, sir.
Q. And they are described in your catalogue here, on pages 33, 34 and 35 of your catalogue appear what are called stations, don't they?
A. Yes, sir.
Q. Those are what are called stations; these articles that appear for instance on pages 32, 31 and 30 are what you called statues, is that right?
A. Yes, sir.
Q. Did you prepare this catalogue, did you get it up?
A. I am not acquainted enough, I have a lady——
Q. It was done under your direction, was it?
A. Yes.
Q. You consider it all right?
A. For all I know, that is I see, I don't read it so well——
Q. You say on the first page in this catalogue: "While our statues are in every way equal to the best imported, our prices
72 are exceedingly lower, about 25 per cent. This in itself is an important fact." That is so, is it?
A. That statement you know I don't recall; that has been printed a long time; I don't recall about prices of imported statue. I have that lady do my work; what she done was right, she was more acquainted than myself, she had been looking over some other catalogue.

By General Appraiser TICHENOR:

Q. I understood you to say that you had two departments, one in which you made what you call religious statues and in the other art work?
A. Yes, sir.
Q. What are the other art works, what class?
A. We have regular classical goods, busts of Washington, any kind of leading people, you know.
Q. That is, as I understand you, is what you call casts, plaster casts?
A. What we sell as plaster casts, or plaster art, both way.
Q. But they differ from your religious statues?
A. Yes, entirely.

JAMES MCLAUGHLIN, called as a witness for the Government, having been duly sworn, testified as follows:

By Mr. WEBSTER:

Q. What is your business?
A. Examiner in the appraisers' department.
Q. What do you examine?
A. Fancy goods, dolls, statuary, musical instruments, church statues.
Q. Have you seen the statues that are in question in this case?
A. I think I have, sir, outside.
Q. How long have you been passing statuary of that class?
A. About seven or eight years, I guess.
Q. Will you please refer to the provision of the tariff law under which that class of goods has been classified during that time?

Mr. SMITH: I object to the witness being asked to testify about a paragraph.

73 Mr. WEBSTER: I want to show the custom of several years. I will change it.

Q. Has there been uniformity in the returns for classification of these goods while you have been in the department, or have changes been made?
A. During the last three or four years?

Mr. SMITH: That question can be answered by yes or no.

A. I think it has been uniform.
Q. Please state what those returns were?

Objected to as absolutely incompetent, immaterial and irrelevant

By General Appraiser TICHENOR:

Q. How long have you been examining these articles?
A. About eight years.
Q. Under what description have you returned that article on the invoices to the collector?

Same objection.

A. As church statuary composed of plaster, decorated, or pulverized cement and plaster. No rate of duty on the invoices: the collector does that.
Q. No rate of duty?
A. No, sir.
Q. You have simply described it as you found it without giving any rate of duty, whether dutiable or free?
A. No; the collector always done that.

By Mr. SMITH:

Q. How long did you say you had been in the appraiser's department?

A. I have been twenty-five years in the service; in that one particular department I say seven or eight years handling those goods.

Q. What department were you in before that?

74 A. I was in the express department downstairs and in the barge office.

Q. You had not been in any department of the appraiser's department that led you to have any special familiarity with those classes of articles, had you?

A. I had been associated with my predecessor for quite a while.

Q. Who was he?

A. James S. Dummond.

Q. When you succeeded him as examiner you found that he had been returning this article just as you had described, did you?

A. Well, I cannot exactly say, because the assistant appraiser, Mr. Stevens, at that time, because of a controversy with Mr. Erterbrook, and it was agreed to return the articles to him (Erterbrook) just as I found them. Mr. Stevens made out a list of church statuary and other articles.

Q. And you made that return in the language furnished you by Mr. Stevens?

A. Yes, sir.

Q. And continued to do so thereafter?

A. Yes, sir.

By Mr. WEBSTER:

Q. But the language furnished you by Mr. Stevens was several different classes, and you selected the one that applied to any particular case before you?

A. I selected the return under the proper material in the article.

By Mr. SMITH:

Q. You mean that you determined whether to say plaster of Paris alone?

A. Yes.

Q. So far as the expression "church statuary composed of"—that language was given you by Mr. Stevens?

A. Yes, sir.

Q. And he got his instructions from Mr. Esterbrook, and you accepted it as Mr. Stevens' subordinate?

A. Yes, sir.

75 LOUIS G. BENZIGER, recalled.

By Mr. SMITH:

Q. Mr. Benziger, do you recall testifying at the last hearing in this case?

A. Yes, sir.

Q. Do you recall at that time you were asked if you had caused to be imported the clay model of the statue of Saint Anthony and the mould?

A. Yes, sir.

Q. And that it was arranged that the clay model should be marked Exhibit 2 and the mould Exhibit 3?

A. Yes, sir.

Q. Now, as a matter of fact, was the mould here?

A. No, sir.

Q. What did we discover the article which we had proposed to have marked as Exhibit 3 to be when the box was opened?

A. We discovered it to be a cast from the mould which is used to copy, so that if the mould should wears out or break, another mould can be cast from it.

It is admitted by counsel for the importers that the witnesses for the Government examined this day were not shown the white statue Exhibit 3 before giving their testimony; and that their testimony did not refer to that exhibit, but refers only to the finished statue of Saint Anthony.

Testimony closed unless counsel for the Government wants to put in more.

76 United States Circuit Court, Southern District of New York.

BENZIGER BROS.
vs.
THE UNITED STATES. } No. 3000.

Appeal by the importers from a decision of the board of United States general appraisers.

TOWNSEND, *J.*:

On March 25, 1899, Benziger Bros. imported into the port of New York certain figures in the round five feet six inches in height, representing the Saviour, St. Anthony of Padua and other religious subjects, and certain bas reliefs representing scenes in the life of the Saviour and known as "Stations of the Cross." These objects are composed of pulverized stone, cement, plaster of Paris, terra cotta and other materials, and are colored and otherwise decorated. They were assessed for duty at 35 per cent. and 45 per cent. ad valorem under the provisions of paragraphs 450 and 97 of the act of July 24, 1897, as "manufactures of plaster of Paris, not specially provided for," or as "articles and wares composed wholly or in chief value of earthy or mineral substances not specially provided for." The importers protested, claiming that the merchandise was exempt from duty as "casts of sculpture imported in good faith for the use of a society incorporated for religious purposes," under paragraph 649 of said act.

These objects are produced in the following manner, as stated by the board:

77 "The clay model of the subject, of desired size, is covered by a workman with a coating some two inches thick of plaster of Paris. When this coating has 'set' or hardened sufficiently, the

clay figure inside is broken up and removed, and a plaster of Paris mold thereof thus obtained. Plaster is then carefully forced into this mould, and when dry is taken out in the form of the original clay figure. This plaster figure, after having been carefully gone over by an artist or skilled workman to cure any defects in the moulding, is in turn thoroughly covered with specially prepared plaster for the final mould. This is made in sections, which when dry are removed, and together form a perfect mould, and this composite mould becomes the manufacturer's substitute for the artist's clay or plaster cast model, from which he (the manufacturer) produces his moulded statues in unlimited numbers. In the moulding process the several sections of the mould are in turn laid with the concave side upward, and having a lining of 'carton pierre,' one-half inch or more in thickness, carefully laid and pressed into them by the moulder's hands with the aid of suitable tools. The extended arms, fingers, and other slender parts are strengthened by pieces of iron wire laid in the 'carton pierre,' which is then lined either with heavy paper or coarse-woven vegetable fiber cloth secured with glue. After the 'carton pierre' has dried sufficiently, the several sections of the mould are removed and their contents joined together around a framework of wood, and a figure is thus formed, the counterpart of the original model. The statue then goes to a skilled workman called a 'finisher,' who with knife or other instrument, removes any roughness resulting from the joining of the sections, cures any other defects in the moulding, and smoothes it down generally. It is then passed to the painter and decorator, who completes it in the style desired."

78 The evidence as to whether these figures as originally moulded or cast were or were not casts of sculpture is conflicting. In their present condition they are not so known commercially or to the profession of sculptors generally.

In the technical or professional sense a cast of sculpture is one taken from an original creation in clay as part of the process of making the completed statue in bronze or marble. In a broader sense the term embraces casts from sculptured objects in marble or bronze which reproduce the original objects.

These objects have been cast or moulded, as above explained, from a sculptured object, using the term "sculptured" in its broadest sense.

The provisions of paragraph 649 of said act of July 24, 1897, are as follows:

"649. Regalia and gems, statuary, and specimens or casts of sculpture, where specially imported in good fath for the use and by order of any society incorporated or established solely for religious, philosophical, educational, scientific or literary purposes, or for the encouragement of the fine arts, or for the use and by order of any college, academy, school, or seminary of learning in the United States, or any State or public library, and not for sale. * * *."

It seems as though Congress must have intended by the term "casts of sculpture" such copies of artistic statuary or other sculp-

ture, cast in materials such as plaster of Paris, as are adapted, for example, for educational institutions, whether intended to be thereafter used as a part of the process of making the statue or not. It cannot have been the intention of Congress however by said provision to permit our churches, colleges and historical societies to import free of duty their whole interior decorations in the plastic art under the guise of casts of sculpture.

Counsel for the importers contends that inasmuch as these articles are cast and are copies of sculptured objects they are in fact casts of sculpture, and that as no trade designation is involved, the
79 testimony of professional sculptors is inadmissible to show the meaning of said term. But in this case the peculiar phraseology of the statute requires that the court should inquire as to the classes of articles included under the broad term "casts of sculpture," in order to determine which would be appropriate for such importations for religious or literary societies. In its broadest sense "casts of sculpture" might be so perverted as to embrace, for example, an India rubber doll.

It is not necessary, however, in the disposition of this case to determine whether such objects if imported in their crude state would be free of duty under said paragraph. They have been advanced by the skill of the artist from a mere manufacture from composition to a completed decorative object. Not only have the figures themselves been elaborately painted and guilded, but in two of the exhibits original paintings have been made showing sky and clouds, temples, arches and other decorations entirely independent of the figure itself. To one of the exhibits there has also been added a piece of twine simulating the rope used by soldiers in their infliction of tortures upon the Saviour. The faces have been so painted as to suggest the sentiments of the actors, and paint simulating drops of blood has been applied to the forehead of the figure of the Saviour. Such objects are not "casts of sculpture."

The decision of the board of general appraisers is affirmed.

W. Wickham Smith, for the importers.
Chas. D. Baker, ass't U. S. att'y, for United States.

(Endorsed:) No. 3000.—United States circuit court, southern district of New York.—Benziger Bros. *v.* The United States.—Opinion, Townsend, *J.*—U. S. circuit court.—Filed Dec. 22, 1900.—John A. Shields, clerk.

80 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States circuit court rooms, in the Post Office building, in

the city of New York, on the 18th day of December, in the year of our Lord one thousand nine hundred.

Present: The Hon. William K. Townsend, judge.

BENZIGER BROS. vs. UNITED STATES. } "A." Suit No. 3000. Cal. No. 158.

The above cause coming on for hearing and determination before this court on the application of Benziger Bros., importers, for a review of the questions of law and fact involved in the decisions of the board of U. S. general appraisers herein, and on the return of the board of general appraisers of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decisions thereon.

Now, after hearing Charles D. Baker, assistant U. S. attorney, on behalf of the collector for affirmance, and W. Wickham Smith, Esq., of counsel for the said importers, for reversal, on motion of Henry L. Burnett, U. S. attorney,

It is ordered, adjudged and decreed that there was no error in said proceedings before said board of general appraisers, and that their decisions herein be and the same are hereby in all things affirmed.

WM. K. TOWNSEND,
U. S. Circuit Judge.

Consented to as to form.
CURIE, SMITH & MAXWELL,
Attorneys for Importers.

(Endorsed:) "A" No. 3000.—U. S. circuit court, southern
81 district of New York.—Benziger Bros. *vs.* United States.—Judgment of reversal—Henry L. Burnett, U. S. attorney.—U. S. circuit court.—Filed Dec. 18, 1900.—John A. Shields, clerk.

United States Circuit Court, Southern District of New York.

BENZIGER BROTHERS vs. UNITED STATES. } No. 3000.

Please take notice that the undersigned, on behalf of Benziger Brothers, hereby appeal from the decision of this court rendered herein and entered on the 22d day of December, 1900, to the United States circuit court of appeals for the second circuit.

Dated New York, December —, 1900.

Yours, &c., CURIE, SMITH & MAXWELL,
Attorneys for Appellants, 22 William St., New York City.

To Henry L. Burnett, Esq., U. S. district attorney; and John A. Shields, clerk, U. S. circuit court.

(Endorsed:) No. 3000.—United States circuit court, southern district of New York.—Benziger Brothers *vs.* The United States.—Notice of appeal.—Curie, Smith & Maxwell, att'ys for appellants, 22 William St., N. Y. city.—U. S. circuit court.—Filed Dec. 21, 1900.—John A. Shields, clerk.

82 United States Circuit Court, Southern District of New York.

BENZIGER BROTHERS *vs.* THE UNITED STATES. } No. 3000.

The above named importers Benziger Brothers, conceiving themselves aggrieved by the decision entered on the — day of December, 1900, affirming the decision of the board of general appraisers, do hereby appeal from said decision to the United States circuit court of appeals for the second circuit, and they pray that this appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said decision was made, duly authenticated, may be sent to the United States circuit court of appeals for the second circuit.

Dated New York, December 21, 1900.

CURIE, SMITH & MAXWELL,
Attorneys for Appellant, 22 William Street, N. Y. City.

It is hereby certified that the questions involved in this case, described in the annexed appeal, are, in the opinion of this court, of such importance as to require a review of the decision of this court by the circuit court of appeals for the second circuit, and
83 the appeal from said decision to said circuit court of appeals is therefore hereby allowed.

Dated New York, December 21, 1900.

(Signed) WM. K. TOWNSEND, *Judge.*

(Endorsed:) No. 3000.—United States circuit court, southern district of New York.—Benziger Brothers *vs.* United States.—Petition and allowance of appeal.—Curie, Smith & Maxwell, atty's for appellants, 22 William street, N. Y. city.—A copy of the within paper has been this day received at this office, Dec. 21, 1900.—Henry L. Burnett, U. S. attorney.—U. S. circuit court.—Filed Dec. 21, 1900.—John A. Shields, clerk.

United States Circuit Court, Southern District of New York.

BENZIGER BROTHERS
vs.
UNITED STATES. } No. 3000.

Assignment of Errors.

Now comes before the justices of the United States circuit court of appeals for the second circuit, at their court rooms, in the city of New York, the said Stern Brothers, and say that in the record of the proceedings aforesaid there is manifest error in this, to wit:

The circuit court erred:

1. In holding that the painting of casts of sculpture disentitles them to free admission under paragraph 649 of the tariff act of July 24, 1897.

84 2. In holding that the articles imported were something more than casts of sculpture.

3. In affirming the decision of the board of general appraisers.

4. In not reversing the decision of the board of general appraisers and holding that the articles in question were entitled to free entry under paragraph 649 of the tariff act of July 24, 1897.

Dated New York, December 21, 1900.

CURIE, SMITH & MAXWELL,
Attorneys for Appellants, No. 22 William Street, N. Y. City.

(Endorsed:) No. 3000.—United States circuit court, southern district of New York.—Benziger Brothers *vs.* United States.—Assignment of errors.—Curie, Smith & Maxwell, attorneys for appellees, 22 William St., N. Y. city.—U. S. circuit court.—Filed Dec. 21, 1900.—John A. Shields, clerk.

United States Circuit Court of Appeals for the Second Circuit.

BENZIGER BROTHERS
vs.
UNITED STATES. } No. 3000.

Know all men by these presents, that I, William H. Northup, am held and firmly bound unto the United States of America in

85 the sum of fifty dollars to be paid to the said United States of America.

For the payment of which well and truly to be made I bind myself, my heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with my seal, and dated the 21st day of December, in the year of our Lord one thousand nine hundred.

WM. H. NORTHUP. [SEAL.]

Whereas, the above named Benziger Brothers have applied to the circuit court of the United States of appeals for the second circuit to

reverse a judgment rendered in the above entitled cause by the judge of the circuit court for the southern district of New York.

Now, therefore, the condition of this obligation is such, that if the above named Benziger Brothers shall prosecute said proceedings with effect and pay all damages and costs which shall be awarded against them herein, if they shall fail to make said proceeding good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

CITY AND COUNTY OF NEW YORK, *ss:*

William H. Northup, being duly sworn, deposes and says: That he does business in the southern district of New York, in the city of New York; that he is worth the sum of one hundred dollars over and above all his just debts and liabilities.

WM. H. NORTHUP.

Sworn to before me this 21st day of December, 1900.

HY. SMITH,

[SEAL.] *Notary Public, New York County.*

86 This bond is approved as to form and amount and sufficiency of surety.

Dated New York, December 21, 1900.

WM. K. TOWNSEND, *Judge.*

(Endorsed:) United States circuit court of appeals for the second circuit.—Benziger Bros. *vs.* United States.—Bond for costs.—Curie, Smith & Maxwell, att'ys for importers, 22 William St., New York city.—U. S. circuit court.—Filed Dec. 21 1900.—John A. Shields, clerk.

UNITED STATES OF AMERICA, *ss:*

To the United States of America and the collector of the port of New York:

You are hereby cited and admonished to be and appear before the United States circuit court of appeals for the second circuit, at the city of New York, on the 10th day of January, 1901, pursuant to an appeal on the part of the importers filed in the clerk's office of the circuit court of the United States for the southern district of New York, in a certain suit or proceeding entitled Benziger Brothers, appellant, *vs.* United States, appellee, to show cause, if any there be, why the decision of the U. S. circuit court, in the said appeal mentioned, should not be reversed, modified or corrected, and speedy justice should not be done in that behalf.

Given under my hand at the city of New York, in the southern district of New York, on the 21st day of December, 1900.

WM. K. TOWNSEND, *Judge.*

(Endorsed:) No. 3000.—United States circuit court, southern district of New York.—Benziger Brothers *vs.* United States.—
87 Citation.—Curie, Smith & Maxwell, attorneys for appellants, 22 Williams St., N. Y. city.—A copy of the within paper has been this day received at this office. Dec. 21, 1900. Henry L. Burnett, U. S. attorney.—U. S. circuit court.—Filed Dec. 21, 1900.—John A. Shields, clerk.

UNITED STATES OF AMERICA,
Southern District of New York, } *ss.:*

I, John A. Shields, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 97 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the cause entitled Benziger Brothers, appellants, against the United States (suit No. 3000), appellee, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 10th day of January, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States the one hundred and twenty-fifth.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

(Stamp.)

88 United States Circuit Court of Appeals for the Second Circuit.

No. 12, October Term, 1901.

Submitted January 24, 1902; decided February 7, 1902.

BENZIGER BROTHERS, Appellants, } (3000.) Appeal from the Circuit Court of the United States for the Southern District of New York. Before Judges Wallace, Lacombe, and Shipman.
vs.
THE UNITED STATES, Appellee.

Affirmed on opinion of court below.

W. Wickham Smith, for the appellants; Charles D. Baker, assistant United States attorney, for the appellee.

89 At a stated term of the United States circuit court of appeals, in and for the second circuit, held at the court rooms in the Post Office building in the city of New York, on the 17th day of February one thousand nine hundred and two.

Present: Hon. William J. Wallace, Hon. E. Henry Lacombe, Hon. Nathaniel Shipman, circuit judges.

BENZIGER BROTHERS, Appellants,
vs.
THE UNITED STATES, Appellee. } (3000.)

Appeal from the circuit court of the United States for the southern district of New York.

This cause came on to be heard on the transcript of record from the circuit court of the United States, for the southern district of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decision of said circuit court be and it hereby is affirmed.

It is further ordered that a mandate issue to the said circuit court in accordance with this decree.

W. J. W.

90 Endorsed: United States circuit court of appeals, second circuit. Benziger Bros., *vs.* U. S. Order for mandate. United States circuit court of appeals, second circuit. Filed Feb. 24, 1902. William Parkin, clerk.

91 UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 90 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of Benziger Brothers *against* United States (3000) as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 1st day of May in the year of our Lord one thousand nine hundred and two and of the Independence of the said United States the one hundred and twenty-sixth.

Seal United States Circuit Court of Appeals, Second Circuit.

WM. PARKIN, *Clerk.*

92 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which Benziger Brothers are appellants and The United States is

appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the southern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States,
93 do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 11th day of June, in the year of our Lord one thousand nine hundred and two.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

94 [Endorsed:] File No. 18,532. Supreme Court of the United States. No. 679, October term, 1901. Benziger Brothers vs. The United States. Writ of certiorari. United States circuit court of appeals, second circuit. Filed Jul- 7, 1902. William Parkin, clerk.

95 To the honorable the Supreme Court of the United States, Greeting:

The record and all proceedings whereof mention is within made having been lately certified and filed in the office of the honorable the clerk of the Supreme Court of the United States, a certified copy of the stipulation of counsel is hereto annexed, and under direction of counsel for the petitioner said stipulation is certified as a return to the writ of certiorari issued herein.

Dated New York, July 29, 1902.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

96 United States Circuit Court of Appeals for the Second Circuit.

BENZIGER BROTHERS
vs.
UNITED STATES.

It is hereby stipulated and agreed between the attorneys for the respective parties hereto that the certified copy of the record, now

on file in the clerk's office of the Supreme Court of the United States, be taken as the return to the writ herein.

Dated, New York, July 28, 1902.

CURIE, SMITH & MAXWELL,
Attorneys for Appellant.
HENRY L. BURNETT, *U. S Att'y,*
Attorney for Appellee.

96½ [Endorsed:] United States circuit court of appeals, second circuit. Benziger Bros. *v.* United States. Return to writ of certiorari.

97 [Endorsed:] File No. 18,532. Supreme Court U. S., October term, 1902. Term No. 326. Benziger Bros., appellants, *vs.* The United States. Writ of certiorari and return. Filed July 30", 1902.

United States Supreme Court,

OCTOBER TERM, 1901.

NICHOLAS C. BENZIGER and Louis Benziger, composing the firm of Benziger Bros.,
Petitioners,

vs.

UNITED STATES,
Respondent.

And now at this October Term, 1901, of this Court come the petitioners above named by their counsel and pray the Court to issue a writ of certiorari to review a decision of the U. S. Circuit Court of Appeals for the Second Circuit, affirming a decision of the Circuit Court of the United States for the Southern District of New York, which affirmed a decision of the Board of U. S. General Appraisers as to the rate and amount of duty on certain articles imported by your petitioners.

Statement.

In January, February and March, 1899, petitioners imported and entered at the Port of New York certain casts of sculpture which had been

imported by them for the use and by order of certain societies established for religious purposes (fols. 28, 29). The appraiser returned these goods as "church statues composed of plaster of Paris decorated," and the Collector assessed upon them a duty of 35% under Paragraph 450 of the Tariff Act of July 24, 1897 (folio 30). Against this classification and assessment the importers protested claiming the articles to be exempt from duty by virtue of the provision in Paragraph 649 of the Free List of the same Act for "casts of sculpture imported in good faith by order and for the use of a society incorporated for religious purposes" (folios 31–2). The protest was transmitted to the Board of General Appraisers, who took some evidence (fols. 73–225). They thereupon rendered a decision (fols. 34–65) overruling the protest and sustaining the collector's action. Petitioners thereupon filed a petition in the U. S. Circuit Court for the Southern District of New York for a review of this decision (fols. 4–16). No further evidence was taken in that Court. The case was heard on the record sent up by the Board of General Appraisers. The Circuit Court affirmed the decision of the Board. The opinion of the Circuit Court (per Townsend, J., appears in the record at fols. 226–237. The Circuit Court of Appeals (to which an appeal was taken) affirmed the decision of the Circuit Court *on the opinion of the Court below.*

Provision of Law to be Construed.

The only paragraph of the law with which the Court will need to concern itself is that relied on by the importer in his protest, as it is conceded in this case that if the imported articles were dutiable at all they were correctly classified by the

Collector. The paragraph relied on by the importer is Paragraph 649 of the Free List of the Tariff Act of July 24, 1897, which reads as follows:

> "Regalia and gems, statuary, and specimen or *casts of sculpture, where specially imported in good faith for the use and by order of any society incorporated or established solely for religious*, philosophical, educational, scientific or literary *purposes*, or for the encouragement of the fine arts, or for the use and by order of any college, academy, school or seminary of learning in the United States, or any State or public library and not for sale; but the term 'regalia' as herein used shall be held to embrace only such insignia of rank or office or emblems as may be worn upon the person or borne in the hand during public exercises of the society or institution and shall not include articles of furniture or fixtures or of regular wearing apparel nor personal property of individuals."

Special Reasons for Issuance of Writ.

These casts of sculpture for the use of churches have been and are frequent subjects of importation. A large number of religious institutions, especially those of the Roman Catholic faith are interested in the disposition of this question. The tax imposed is onerous. The amount already involved at this and other ports for duties already paid under protest is a very considerable sum. It is believed that the decisions sought to be brought under review have nullified the plain intention of Congress, and contrary to

the general spirit and intent of our tax laws, church property is subjected to heavy taxation. Congregations which call for this class of devotional objects are usually poor and struggling congregations, and the prices paid for these casts generally represent the small contributions of the poor. An interpretation of the law which increases by at least 1/3 the amount to be expended is one which should be free from all doubt, whereas, we submit, it is not only not free from doubt but manifestly erroneous. The Tariff Act construed by the Courts in this case is still in force, and no relief can be obtained against the continued exaction of these duties in the future unless a review in this Court can be obtained.

Argument.

The provisions of the Free List, upon which appellants rely, is for "casts of sculpture imported in good faith for the use of a society incorporated for religious purposes." The provision for casts of sculpture is unqualified. It is not required that the figures shall be of an artistic character or attain to the rank of works of art. It is not provided (as it is with reference to statuary) that they shall be professional productions of a sculptor. There is no limitation whatever.

The articles in question are not only *the* casts of sculpture which have been recognized for many years as the articles entitled to free admission, under provisions in the Tariff law corresponding with the one now under consideration, but, as is well known, they are the only kind of casts of sculpture that would be imported for the use of religious societies.

As early as 1885, the Treasury Department decided (SS. 7274) that four figures of various sizes,

which were cast or moulded from a mineral substance and decorated, were entitled to free entry under the provision of paragraph 759 of the Tariff Act of 1883 for casts.

In 1891 the Naval Officer at New York raised the same question as is here involved, and the Treasury Department thus replied to it (SS. 11747):

> "The Department believes that the crude or inartistic character of the figures under consideration cannot be urged as a reason for their exclusion from the benefits of free entry."
>
> "It is fair to infer a liberal intention on the part of Congress from the fact of its inclusion of religious institutions among those to which the privilege of free entry is extended. Religious institutions are not schools of art, nor can congregations without adequate means always consult aesthetic rules in regard to the equipment of their churches. It is the sentiment of pious associations which gives the figure its efficiency as an aid to religious worship, and *the plaster cast may, in this way, be as serviceable to the humble worshipper as the more costly work of genius.*"

Again in 1893, the President of the Board of General Appraisers, Mr. George C. Tichenor (the author of the opinion of the Board of General Appraisers in this case) addressed a letter to the Department complaining of the free entry of articles of this character, claiming that they were "the products of a certain large manufacturer and importer of church statuary, images, etc.," and expressing the opinion that "the provision for the free admission of statuary

extended only to such works as were the inspired creations of the artist, rather than the works of the artisan or mechanic, the products of the factory or the workshop." This language will be noted as very similar to the language used in the opinion of the Board in the present case. To this communication the Department replied:

> "The comments of the Board upon the evident intention of Congress that the objects exempted from duty should be of such high order as to inspire admiration and devotional feeling, elevate the taste, educate and improve the mind, encourage fine art, and minister generally to the higher faculty of mankind, apply to paragraphs 692 and 465 (of the Tariff Act of 1890, which provide for statuary, the professional production of the statuary or sculptor only, and for statues, statuary, and for specimens of sculpture), and not to paragraph 677, *which provides without the restrictions enumerated in paragraph 465, and implied in paragraph 692 for the exemption from duty of all 'casts of plaster of Paris imported in good faith for the use of any society or institution incorporated or established for religious purposes.'*"
>
> "Under the last named paragraph, it would appear *that any plaster casts which shall be regarded by a religious society as a desirable acquisition, and shall be classified by the Collector as coming within the terms of paragraph 677, may be imported free of duty without regard to its artistic character.*"
>
> "The Department cannot interpret the provisions of paragraph 677 as establishing in any respect an aesthetic standard for such importations, and, without discussing the propriety

of such standards, must administer the law according to its apparent intent."

These decisions were before Congress when the present act was drawn. The Treasury Department had sharply called attention to the fact that the provision for casts of plaster of Paris did not contain any words indicating an artistic or æsthetic standard. There is no reason to doubt that in using the words "casts of sculpture" without qualification in paragraph 649 of the present act, Congress intended to continue the liberal policy referred to by the department with reference to articles imported for churches. There is nothing in the paragraph to indicate any intention of Congress to reverse a long-settled policy.

Casts imported for educational societies have been free of duty since 1816, and casts imported for churches have been free of duty since 1861. The policy of according free admission to articles imported for churches is one which should be approved by the Courts, and the tendency of judicial decisions should be to give such provisions a liberal interpretation, and not restrict their application by imposing qualifications and limitations which Congress, after having had its attention called to the matter, has seen fit not to impose.

The only effect of imposing such limitations as are suggested by the Board of Appraisers to the scope of this paragraph, would be to accord free admission to fine works of art imported for wealthy churches who could best afford to pay duty on them and deny a similar privilege to the humbler devotional works imported for struggling churches upon whom the burden of any duty would rest most severely.

In their opinion the Board of Appraisers suggest that Paragraph 649 provides for "statuary

and specimens or casts of sculpture;" that the articles in question cannot be both, and that they are known in commerce, art and common speech as statuary. It seems a sufficient answer to this to state that in common speech the articles in question are undoubtedly casts of sculpture; that commercial designation has nothing to do with this paragraph, and that the Treasury Department has constantly held that these articles are not statuary, as is shown by the citations already given. It will be noted that throughout this decision the Board takes great pains to refer to these articles as "molded," and carefully and sedulously refrains from using the term "cast." Of course, all casts are molded. The following are the definitions from Webster's dictionary of the word "cast," both as a verb and a noun:

Cast n., that which is formed in a mold; especially a reproduction or copy as of a work of art in bronze or plaster.

Cast v., to form in a particular shape by pouring liquid metal or other material into a mold.

It seems unnecessary to discuss the question whether these articles are, in fact, casts of sculpture. They are certainly so within any common or reasonable definition of the term.

The decision of the Circuit Court below (adopted by the Circuit Court of Appeals) seems from the concluding paragraph of its opinion to be chiefly based on the suggestion that these articles have ceased to be casts of sculpture because they are painted or gilded; or, to quote the language of the opinion "that they have been advanced by the skill of the artist from a mere manufacture from composition to a completed decorative object." We respectfully suggest that in according free ad-

mission to casts of sculpture imported for churches, Congress did not suppose it was providing for mere manufactures from composition. It obviously contemplated the importation of casts of sculpture so prepared as to be suitable for the decoration of churches, and it is well known that casts for these purposes require to be and usually are decorated. Churches (especially those of the denomination which most largely uses these devotional figures) are apt to be dimly lighted, and casts which were not colored could be appreciated only by those who stood close to them to examine their character. To perform their functions of so decorating a church that those seated in its pews may have their devotional feelings inspired, and their religious aspirations exalted by a contemplation of these figures, they require to be, and usually are colored, gilded and otherwise decorated. Congress knew of this as well as we know it, and it is a fanciful supposition that Congress intended that such articles, if imported in plain white, should be admitted free, but, if colored, should become dutiable as "manufactures of plaster of Paris."

In respect to this suggestion of the Circuit Court, the case of Hartranft v. Wiegmann (121 U. S., 609) is directly in point. The articles there in question were shells which had been cleaned, polished, ground on an emery wheel, and had the Lord's Prayer etched upon them. They had been classified as "manufactures of shell," and were claimed to be "shells, not manufactured." This Court thus disposed of the Government's contention:

> "We are of opinion that the shells in questior here were not manufactured, and were not manufactures of shell. *They were*

still shells. They had not been manufactured into a new and different article having a distinctive name, character, or use from that of a shell. The application of labor to an article either by hand or by mechanism, does not make the article necessarily a manufactured article within the meaning of that term as used in the tariff law."

Now we submit that the artistic labor, which had been applied to these casts of sculpture after they came from the mould to fit them for the purpose for which they were designated, had not converted them into anything but casts of sculpture. They were still casts. They had acquired no distinctive name, character or use. If we were dealing with two provisions of the dutiable schedules, one of which provided for casts of sculpture at a higher duty than that provided for manufactures of plaster of Paris, or earthy or mineral substances, would it be seriously contended that the importer of these articles could change them from casts of sculpture to manufactures of plaster of Paris for the purpose of obtaining the benefit of a lower rate of duty by painting or gilding them or performing other work upon them which better fitted them for the use for which they were intended?

For the reasons above stated the writ of certiorari should issue as hereinbefore prayed.

Dated New York, May 15, 1902.

CHARLES CURIE,
W. WICKHAM SMITH,
Attorneys for Petitioners.

W. WICKHAM SMITH,
Counsel.

6210

Supreme Court of the United States,

OCTOBER TERM, 1903.

NICHOLAS C. BENZIGER and LOUIS BENZIGER, composing the firm of BENZIGER BROTHERS,
Petitioners,
vs.
THE UNITED STATES.
No. 54.

This is a proceeding to review a decision of the Circuit Court of Appeals for the Second Circuit, in the cause above entitled, affirming a decision of the Circuit Court of the United States for the Southern District of New York, which affirmed a decision of the Board of General Appraisers, sustaining the action of the Collector of the Port of New York in assessing duty upon articles imported by petitioners. A writ of *certiorari* to review said decision was issued by this Court on June 11, 1902 (Rec., fols. 92–93).

Statement of the Case.

On the 25th of March, 1899, petitioners imported into the port of New York certain casts representing scriptural characters. One was a figure representing St. Vincent of Paul, imported for the use and

by the order of St. Mary's Orphan Asylum, located at Norfolk, Va.; one statue of St. Anthony, imported for the use and by the order of Sacred Heart Church, located at Bloomfield, N. J; one statue of St. Anthony, imported for the use and by the order of St. Mary's Church, located at East Saginaw, Mich., and two statues of Adoring Angels, imported for the use and by the order of St. Joseph's Church, located at Dayton, Ohio (see letter of Collector of Customs, Record, p. 6, fol. 10). Upon these articles the Collector of the Port of New York assessed duty at 35 per cent. (fol. 10). Against this exaction the importers in due time and in the manner provided by law filed a protest, claiming the casts to be exempt from duty under paragraph 649 of the Free List of the Tariff Act of July 24, 1897, then in force (fol. 11).

No question is raised in this case as to the Collector having exacted the proper rate of duty under the proper paragraph of the law if the articles in question were dutiable at all, and were not exempt from duty by virtue of the special provision of the Free List referred to in the protest. The paragraph under which the duty was assessed provides, among other things, for manufactures of plaster of Paris, *not specially provided for in this act.* The contention of the importers is that these casts were specially provided for in paragraph 649 of the Free List, which reads as follows:

> "Regalia and gems, statuary and specimens or *casts of sculpture, where specially imported in good faith for the use and by order of any society incorporated or established solely for religious,* philosophical, educational, scientific, or literary *purposes,* or for the encouragement of the fine arts, or for the use and by order of any college, academy, school or seminary of learning in the United States, or any State or public library, *and not for sale;* but the term 'regalia,' as herein used, shall be held to embrace only such insignia of rank or office or emblems as may be worn upon the person or borne in the hand during public exercises of the society or institution, and shall not in-

clude articles of furniture or fixtures, or of regular wearing apparel, nor personal property of individuals."

The protest of the importers was transmitted in accordance with Section 14 of the Customs Administrative Act to the Board of General Appraisers. This Board took certain so-called testimony which appears in the record, pages 16–55. Thereafter they overruled the protest and sustained the action of the Collector. Their decision will be found on pages 8-14 of the record. A petition for review was thereupon filed by the importers (Rec., pp. 1–4). The case was heard in the Circuit Court on the record sent up by the Board of Appraisers, and the Circuit Court affirmed the decision of the Board. The opinion of Judge Townsend will be found in the record (fols. 76–79). The importers appealed to the Circuit Court of Appeals, which affirmed the decision of the Circuit Court, stating that it did so on the opinion of the Court below (Rec., fol. 88).

Specification of Errors

The Circuit Court of Appeals erred in affirming the decisions of the Circuit Court and Board of General Appraisers holding these articles to be dutiable, and in not sustaining the protest of the importers and holding them to be exempt from duty under paragraph 649 of the Act of 1897 as *casts of sculpture imported in good faith for the use of a society established for religious purposes.*

Argument.

As already pointed out there was no opinion written in this case by the Circuit Court of Appeals. Opinions were written by both the Board of Appraisers and the Judge of the Circuit Court. These decisions, while both against the importers, were largely based on different grounds. It will apparently facilitate the determination of the controversy

to consider: First, the grounds assigned by the Board of Appraisers for overruling this protest. Second, the grounds assigned by the Circuit Court for its decision in favor of the Government, and Third the grounds upon which the importers base their claim to free entry.

I.

The arguments of the Board of General Appraisers.

The Board of Appraisers referred to these articles in their decision as moulded statuary (fol. 22,) stating that the aritcles are not in fact casts of sculpture. This suggestion seems hardly to require any answer. The word "sculpture" is thus defined by Webster:

> "The art of carving, cutting or hewing wood, stone, metal, &c., into statues, ornaments, &c., or into figures as of men, beasts or other things; hence the art of producing figures in groups, whether in plastic or hard material."

The following is the definition of the word "cast" in Webster's Dictionary, both as a noun and a verb:

> "Cast, n., that which is formed in a mold; especially a reproduction or copy, as of a work of art in bronze or plaster.
>
> Cast v., to form in a particular shape by pouring liquid metal or other material into a mold."

There can be no question that such figures as are described in the findings of the Board are in fact and in common speech casts of sculpture, as they have been held to be in decisions presently to be reviewed by the Treasury Department, and the fact

that they are casts of sculpture cannot be obliterated by calling them moulded statuary.

At folio 14 the Board of General Appraisers say that the articles in question are of a class which was known in commerce, in art, and to classifying officers of customs of the United States on July 24, 1897, and for many years prior thereto as statuary —specifically, as church statuary, and at folio 22 they repeat that assertion and say, "paragraph 649 of the Tariff Act provides for statuary and specimens or casts of sculpture. The articles in question cannot be both."

The finding of the Board that these articles have been known in commerce as statuary or church statuary is apparently based on the testimony of two witnesses, each connected with the same establishment, namely, a man named Antonio Da Prato, who is a manufacturer at Charlestown, Mass. (Rec., fols. 66–72), and a salesman for a domestic establishment called the Da Prato Statuary Company (Rec., fols. 56–66). Such testimony is not, within the decisions of this Court, sufficient upon which to establish a commercial designation.

Maddock *v.* Magone, 152 U. S., 368.
Sonn *v.* Magone, 159 U. S., 417.

It would, however, make but little difference whether these articles were specifically known in commerce as church statuary or not, there being no provision in the law for church statuary, or, as we shall presently see, for any cast statuary at all. If these articles are casts of sculpture within the meaning of the law, it is of no consequence whether they have or have not been known as church statuary.

The finding that these articles have been known in art as church statuary is, as far as we have been able to discover, based on no evidence whatever. The artists who were called as witnesses seemed anxious to show that they knew nothing about

these articles whatever, and that they were not known to art or recognized by art.

The finding that these articles have been known to classifying officers of the customs for many years as church statuary is apparently based on the testimony of one witness, who is an examiner in the Appraiser's Department at New York (see Rec., pp. 53–54). All that this witness testified was that for a period of eight years he had, in accordance with the instructions of an assistant appraiser named Stevens, returned such articles as these as church statuary. On the other hand, any such return was contrary to the ruling of the Treasury Department, whose duty it is (Section 251 of the Revised Statutes) to lay down the rules by which the classifying officers shall be governed, and which, in a decision in 1893, to be hereafter more fully discussed, distinctly held such articles to be free as "casts of plaster of Paris."

We are unable to understand the meaning of the Board's suggestion that articles cannot be both statuary and casts of sculpture. It is familiar to every one that many articles may be and are both. With practically few exceptions, all bronze statuary, from the lowest class to the highest is cast, and would certainly be known both as statuary and as casts of sculpture. The Board itself refers (Rec., fol. 18) to casts of sculpture exhibited at the Metropolitan Museum of Art in New York. We think nobody would pretend to deny that these casts were statuary. Casts of sculpture not imported for the societies described in the free list provisions were always held dutiable as statuary until in 1890 Congress limited the word "statuary" by providing that it should refer only to such articles as were cut by hand from a solid block of marble, stone, alabaster or metal.

The principal argument of the Board of General Appraisers for overruling the protest of the importers is that the articles in question are not works of high art or works of art at all, are not made by

professional sculptors from models of their creation, but are made in molds by artisans in industrial establishments. If these articles had not been imported for the use of churches but were imported for sale as part of a dealer's stock and were claimed to be dutiable as statuary under paragraph 454 of the Tariff Act, which provides that "the term 'statuary' shall be understood to include only such statuary * * * as is the professional production of a statuary or sculptor only," this argument would be unanswerable, and, in view of the fact that this limitation in paragraph 454 is made to apply to the term "statuary," as used in this act, the argument would be equally unanswerable if the exemption of this merchandise from duty was claimed under the provision for statuary in paragraph 649. But the term "cast of sculpture," as used in paragraph 649 is subject to no such limitation, and when Congress has not seen fit to impose such a limitation the Board of General Appraisers have no right to inject it.

The adverse decision of the Board of General Appraisers is largely predicated upon the fact which is not, and never has been questioned, that the price of these articles depends very largely upon the gilding or decoration which fits them and adapts them for use in churches. As this is also the principal ground assigned by the Circuit Court for its decision it will be more convenient to discuss it at a later stage of the argument when we come to review the decision of the Circuit Court.

A further ground assigned by the Board of General Appraisers for overruling the protest of these importers is found in their attempt to restrict the term "casts of sculpture" as used in paragraph 649 to the cast which is made by a sculptor from his clay model when he is preparing to carve a statute from stone or marble, and as to which the Board say:

> "These plaster of Paris models are known in commerce and in art as casts of sculpture."

So far as this suggestion refers to the designation of such plaster models in commerce, it must be quite obvious that there is nothing to base it on. Models which sculptors make and use in their work of preparing a statue are certainly not objects of commerce at all in any reasonable sense of the word "commerce." It may be doubted whether any such article was ever bought or sold. If a case of this kind ever occurred it would certainly be an exceptional and isolated transaction. The original manuscript of a celebrated author might be sold as a curiosity, but certainly no one would ever speak of author's manuscripts as being articles of commerce. The whole language of paragraph 649 makes it plain that the words therein used are not used in any commercial sense. None of the articles therein named are exempt if they are imported for sale, and *sales constitute commerce.*

It must also be entirely clear that to give the term "casts of sculpture" the restricted scope suggested by the Board of General Appraisers would be to completely nullify the legislation of Congress. No one has ever yet been able to suggest how or why or under what conceivable circumstances churches would import for their own use the plaster models of sculptors. This point was duly brought to the attention of the Board by inquiries addressed to the witnesses. Thus the witness Rhind was asked (fol. 31).

> "Q. As to those casts that you spoke of that are part of a process such as made by an artist when he is preparing to create a statue, have you ever seen those exhibits here in churches as a part of the decoration of the church?
> A. No."

The witness Zolnay was asked (fol. 37):

> "Q. Do they (referring to sculptor's plaster models) ever form part of the ornamentation or decoration of churches?
> A. No."

The suggestion or intimation in the opinion of the Board of General Appraisers that the witnesses (sculptors) called by the Government at the hearing before the Board all testified that these articles were not casts of sculpture will be found not to be borne out by the evidence at all. A brief review of it may be interesting.

The first witness examined, Mr. Bruckstuhl, practically based his claim that these articles were not casts of sculpture on the fact that they were gilded or ornamented. He testified (fol. 28):

> "Q. *They are casts of sculpture in a certain sense*, of course. * * * A cast of sculpture ceases to be a cast of sculpture as soon as it is painted."

The next witness, Rhind, being asked as to these articles (fol. 31):

> "Q. Well, *are they casts of any kind of sculpture*, whether ancient or modern?
> A. *I am not sure.*"

The third witness, Karl Bitter, undertook to restrict the term casts of sculpture, as the Board does, to the plaster models of a sculptor, but being further examined testified (fol. 33):

> "Q. Do you consider these articles that you saw here to-day then, casts from sculpture?
> A. Yes, I do.
> Q. You think from sculpture, although according to your definition they are not casts of sculpture? A. Yes, sir."

The next witness, Herbert Adams, clearly based his statement that these articles are not casts of sculpture on the same untenable rule advanced by the Board of Appraisers, namely, that the term "casts of sculpture" is restricted to the plaster models of a sculptor. Thus he testified (fol. 34):

> "As I understand it, the term casts of sculpture in the profession is understood to

mean the reproduction of the artistic work in plaster as an intermediate stage between the modeling and the clay and the final execution in permanent material.

Q. In other words, it is part of the process of making a statue?

A. It is part of the process of making a statue.

Q. In solid material?

A. Yes."

The next witness, Mr. Zolnay, was asked by the Government counsel (fol. 36):

"Q. Please *state whether or not in your opinion these figures* are specimens or *casts of sculpture?*

A. *Yes, certainly they are in plaster cast.*"

The witness then went on to make the claim that they ceased to be casts of sculpture because they were gilded.

The next witness, W. R. O'Donovan, testified (fol. 38):

"Q. Are those moulded articles you examined what you understand to be specimens or casts of sculpture?

A. They are, necessarily; *they are casts* or specimens *because they are sculpture.* What grade of sculpture they are is another question."

The next witness Paul Bartlett was asked (fol. 39):

"Q. Now, Mr. Bartlett, you are not willing to swear that those figures are not *casts of sculpture?*

A. *I am not willing to swear they are not.*"

The next witness, Albert Weinert, testified (fol. 40):

"Q. Will you please state whether these figures are specimens or casts of sculpture?

A. *I think they are plaster casts of sculpture.*

Q. Are these articles of sculpture—please leave the plaster out; are they moulded casts of sculpture?

A. *They are casts of sculpture*, yes."

The next witness, Purio Piccirilli, testified (fol. 42):

"Q. Do you call those casts of sculpture?

A. I may call them casts of bad sculpture.

Q. *Are they such articles as you have heard artists call casts of sculpture?*

A. *Yes, sir.*"

Now, it is respectfully submitted, in view of this testimony, that so far from the evidence fairly showing that these articles are not known to artists as casts of sculpture on the other hand it distinctly shows affirmatively that they are known as casts of sculpture, and so far as any testimony given by these witnesses suggests that these articles are not casts of sculpture it will be found to be based entirely on either one of the fundamental errors which have crept into the decisions of the Board of Appraisers and of the Circuit Court, either that the term "casts of sculpture" must be restricted to the plaster model which a sculptor makes when he is creating a statue or that articles which are indisputably casts of sculpture cease to be such the moment you apply any gilding or decoration. The testimony taken as a whole will be found to very clearly bear out this assertion.

At folios 20 and 21 the Board of Appraisers refer to a decision of the Treasury Department in 1883 (SS. 5549) acquiescing in the result of the trial of a customs suit at New York. The Board makes statements as to the place where the goods in question in that suit were manufactured, and of the material of which they were manufactured, which are not borne out by anything contained in the printed decision to which they refer, and which from any point of view are clearly irrelevant to the present controversy. They then go on to state the results of an investigation made in 1883 by officers of the

Treasury Department concerning the firm of Mayer & Company, of Munich, and make certain comments upon the recklessness of that firm's testimony in the case referred to by the department. Mayer & Company are not the parties to this case. The alleged facts injected into this record are not established by any evidence of any kind taken in the case or appearing in the record, and apparently from their nature could not be, and it is respectfully submitted that, in view of this situation and especially of the fact that the statements are wholly irrelevant, their insertion in the decision was an impropriety and an indication of prejudice and bias.

In the concluding paragraph of their opinion the Board of Appraisers state that the change in the language of the Act of 1897, whereby the qualifying words "respecting statuary" were made applicable not only to the dutiable statuary provided for in Schedule N, but to statuary wherever provided for in the act, was a radical change. True it was radical and the Court should give it no less effect than Congress intended, but *they have no right to extend it.* The effect of it is to prevent marble or other statuary (not cast) from being imported for churches, colleges, etc., unless it is cut by hand from a solid block and is the professional production of a statuary or sculptor, without the payment of duty. What the Board of Appraisers have sought to do is to extend the application of it to casts of sculpture, although Congress itself saw fit to impose no such limitation. And, as we shall hereafter show, so far from all the facts indicating that Congress intended to impose any such limitation, every legitimate inference is that they did not intend it and therefore did not do it.

The Board also notes as a radical change the omission in paragraph 638 of the present Act of the words "statuary, casts of marble, bronze, alabaster or plaster of Paris" which were in paragraph 585 of the previous act and in corresponding paragraphs of older acts. A very slight examination of the Tariff

Act of 1894 and 1897 will demonstrate the fallacy of this contention. It is true, as the Board state, that paragraph 585 of the Tariff Act of 1894 expressly exempted from duty, "statuary, casts of marble, bronze, alabaster or plaster of Paris imported in good faith for the use of any society or institution incorporated or established for religious, philosophical, educational, scientific, or literary purposes, or for encouragement of the fine arts, and not intended for sale," but, it is also true (though they fail to mention it), that paragraph 603 of the Act of 1894 also exempted from duty statuary and specimens or casts of sculpture where specially imported in good faith for the same identical institutions. In other words, Congress found that in an existing Tariff Act it had provided for exemption of the same class of articles for the same institutions in two different paragraphs. When they came to change the law, they naturally dropped one of these provisions as superfluous and that is the extent of the radical change they made. They left in paragraph 649 of the present act the words "specimens or casts of sculpture," which are the broader of the two expressions, and of course include casts of marble, bronze, alabaster or plaster of Paris, and dropped the other words. In other words, as Congress was giving full exemption from duties to these articles in paragraph 649 of the present act (which corresponds generally with paragraph 603 of the Act of 1894), it considered it unnecessary to repeat in paragraph 638 of the present act the exemption, which had been provided in paragraph 585 of the Act of 1894. If, as the Board state, it was the deliberate purpose of the Congress to exclude from free admission and relegate to the dutiable schedules, according to their component materials, casts of marble, bronze, alabaster or plaster of Paris, why did they insert in paragraph 649 an exemption for casts of sculpture?

The Board adds to this remarkable finding that this (referring to what they incorrectly held Con-

gress to have done) was done in the interest of domestic industry and of the revenue. On the contrary, we assert that this was not done, and that the reason why it was not done was the same reason which had prevailed in tariff acts for many years, to wit, in the interest of education and religion.

II.

The decision of the Circuit Court.

We have already suggested in the early stages of this discussion that the Board of Appraisers laid considerable stress upon the fact that these ecclesiastical figures were painted or gilded and that this constituted by far the larger part of their value. But it does not seem to have occurred to the Board to hold that the gilding and the painting, although they had enhanced the value of the cast had changed them into anything other than casts. True, some of the witnesses had suggested that the moment you decorated or gilded a cast of sculpture it ceased to be a cast of sculpture, but the Board did not go so far as to predicate on any such testimony any suggestion that the casts of sculpture had by decoration and gilding been manufactured into something else. Yet this is the proposition which seems to have controlled the mind of the learned Judge in the Circuit Court, for we find him stating in his opinion the following:

> "It is not necessary, however, in the disposition of this case to determine whether such objects, if imported in a crude state would be free of duty under said paragraph. They have been advanced by the skill of the artist from a mere manufacture from composition to a completed decorative object * * *. Such objects are not casts of sculpture."

This naturally suggests the inquiry, if these articles are not casts of sculpture what are they? The law is well settled that to convert a crude article into a manufactured article, it must have been subjected to such processes as to change its identity and give it a new name, character and use. Now, what new name, character or use has a gilded or painted figure of St. Anthony or St. Joseph as compared with one which is not painted or gilded? In according free admission to casts of sculpture imported for churches, Congress did not suppose it was providing for mere "manufactures from composition." It obviously contemplated the importation of casts of sculpture so prepared as to be suitable for the decoration of churches, and it is well known that casts for this purpose require to be and usually are decorated. Churches (especially those of the denomination which most largely uses these devotional figures) are apt to be dimly lighted, and casts which were not colored could be appreciated only by those who stood close to them to examine their character. To perform their functions of so decorating a church, that those seated in its pews may have their devotional feelings inspired, and their religious aspirations exalted by a contemplation of these figures, they require to be, and usually are, colored, gilded and otherwise decorated. Congress knew of this as well as we know it, and it is a fanciful supposition that Congress intended that such articles, if imported in plain white, should be admitted free, but, if colored, should become dutiable as "manufactures of plaster of Paris."

In respect to this suggestion of the Circuit Court, the case of Hartranft *v.* Wiegmann (121 U. S., 609) is directly in point. The articles there in question were shells which had been cleaned, polished, ground on an emery wheel, and had the Lord's Prayer etched upon them. They had been classified as "manufactures of shell," and were claimed to be "shells, not manufactured." This Court thus disposed of the Government's contention:

> "We are of opinion that the shells in question here were not manufactured, and were not manufactures of shell. *They were still shells. They had not been manufactured into a new and different article, having a distinctive name, character or use from that of a shell.* The application of labor to an article, either by hand or by machinery, does not make the article necessarily a manufactured article within the meaning of that term as used in the tariff law."

Now we submit that the artistic labor, which had been applied to these casts of sculpture after they came from the mould to fit them for the purpose for which they were designated, had not converted them into anything but casts of sculpture. They were still casts. They had acquired no distinctive name, character or use. If we were dealing with two provisions of the dutiable schedules, one of which provided for casts of sculpture at a higher duty than that provided for manufactures of plaster of Paris, or of earthly or mineral substances, would it be seriously contended that the importer of these articles could change them from casts of sculpture to manufactures of plaster of Paris for the purpose of obtaining the benefit of a lower rate of duty by painting or gilding them or performing other work upon them which better fitted them for the use for which they were intended?

III.

The ground of the importers' contention.

The importers rely in this case on a well established principle of law repeatedly applied to the construction of statutes, and particularly to revenue statutes, and recognized by this Court and the sub-

ordinate Federal courts in a multitude of decisions. That principle is that where language used in a former tariff act has received a uniform and consistent interpretation by the department of the Government charged with the execution of the law (in this case the Treasury Department) and Congress in framing new legislation repeats the language of the prior act, it will, in the absence of some *more controlling* consideration, be presumed to have used the language in the meaning and charged with the construction which has been given to it by the executive department.

Schell *v.* Fauche, 138 U. S., 572.
Robertson *v.* Bradbury, 132 U. S., 493.
Robertson *v.* Downing, 127 U. S., 613.
U. S. *v.* Dean Linseed Oil Co., 87 F. R., 456.
Anglo-California Bank *v.* Sec. of the Treasury, 76 F. R., 750.
U. S. *v.* Wotten, 50 F. R., 694.

See also

U. S. *v.* Johnston, 134 U. S., 236.
Bate Refg. Co. *v.* Sulzburger, 157 U. S., 1.
U. S. *v.* Hill, 120 U. S., 169.
U. S. *v.* Philbrick, 120 U. S., 52.
Butterworth *v.* U. S., 112 U. S., 67.
Five per cent. cases, 110 U. S., 484.
Hahn *v.* U. S., 107 U. S., 406.

This is from our point of view the only point involved in this case.

Section 22 of the Tariff Act of July 14, 1870, exempted from duty "philosophical and scientific apparatus * * * casts of marble, bronze, alabaster, or plaster of Paris * * * specially imported in good faith for the use of any society or institution incorporated or established for philosophical, educational, scientific, or literary purposes, or encouragement of the fine arts, and not intended

for sale." Under this statute it was held by the Treasury Department on October 25, 1871 (SS., 948), that

> " Plaster casts imported for the use of an educational institution are exempt from duty under Sections 23, Act of March 2nd, 1861, and 22, Act of July 14th, 1870, when they are imported by the order of such institution."

It will be noted that in this decision *there is no restriction, express or implied, as to the artistic character of the plaster casts.*

Paragraph 759 of the Tariff Act of 1883 exempted from duty " philosophical and scientific apparatus * * * statuary, casts of marble, bronze, alabaster, or plaster of Paris * * * specially imported in good faith for the use of any society or institution incorporated or established for religious * * * purposes or encouragement of the fine arts, and not intended for sale."

Paragraph 771 of the same act exempted from duty " regalia and gems, statues, statuary, and specimens of sculpture, where specially imported in good faith for the use of any society incorporated or established for * * * religious purposes * * * ."

In SS. 7274, decided December 22, 1885, the Treasury Department held that four figures of various sizes which were cast or moulded from a mineral substance and *decorated*, and " were produced in a manner similar to figures and other ornaments manufactured of Parian marble, bisque, terra-cotta, plaster, &c.," imported for St. Joseph's Church, Willimantic, Conn., were entitled to free entry. Secretary Fairchild, in his decision, said:

> " While under numerous decisions of the Department *these figures are clearly not statuary* within the meaning of paragraph 771 of the Free List, yet if the figures are, as claimed, *casts* of the character named in paragraph 759 of the Free List, to wit, casts of bronze, alabaster, or plaster of Paris, or as-

> similate thereto in material, quality, and texture, the Department concurs in your view that under the provisions of Section 2499, Revised Statutes, and of paragraph 759, as aforesaid, they would be entitled to free entry when "specially imported in good faith for the use of a society or institution incorporated or established for religious purposes."

In considering this decision two facts are to be noted. First, that the Treasury Department did not consider that the fact that these figures were decorated excluded them from the free entry allowed to the casts of plaster of Paris imported for the use of a church.

Second, that the Board of Appraisers are clearly in error when they say (at fol. 14 of the Record), that "such figures as these are of a class which was known * * * to classifying officers of customs of the United States on July 24, 1897, and for many years prior thereto as statuary." Here we find the Secretary of the Treasury stating that under numerous decisions of the Department these figures are not statuary within the meaning of a paragraph of the Free List, which is almost identical in language with paragraph 649 of the present act, except that paragraph 649, in order to provide for these articles, has expressly exempted casts of sculpture.

In 1891 the Naval Officer of New York raised the same question as is here involved, and the Treasury Department thus replied to it (SS. 11747):

> "The Department believes that the *crude or inartistic character* of the figures under consideration cannot be urged as a reason for their exclusion from the benefits of free entry."
>
> "It is fair to infer a liberal intention on the part of Congress from the fact of its inclusion of religious institutions among those to which the privilege of free entry is extended. Religious institutions are not schools of art, *nor can congregations without adequate means always consult æsthetic rules in regard to the equipment of their churches.* It

> is the sentiment of pious associations which gives the figure its efficiency as an aid to religious worship, and the *plaster cast may, in this way, be as serviceable to the humbler worshipper as the most costly work of genius.*"

Again in 1893, the president of the Board of General Appraisers, Mr. George C. Tichenor (the author of the opinion of the Board of General Appraisers in this case), addressed a letter to the Department complaining of the free entry of articles of this character, claiming that they were "the products of a certain large manufacturer and importer of church statuary, images, &c.," and expressing the opinion that "the provision for *the free admission of statuary extended only to such works as were the inspired creations of the artist, rather than the works of the artisan or the mechanic, the products of the factory or the workshop.*" This language will be noted as very similar to the language used in the opinion in the present case. To this communication the Department replied:

> "The comments of the Board upon the evident intention of Congress that the objects exempted from duty should be of such high order as to inspire admiration and devotional feeling, elevate the taste, educate and improve the mind, encourage fine art, and minister generally to the higher faculties of mankind, apply to paragraphs 692 and 465 (of the Tariff Act of 1890, which provide for statuary, the professional production of the statuary or sculptor only, and for statues, statuary, and for specimens of sculpture) and not to paragraph 677, *which provides without the restrictions enumerated in paragraph 465, and implied in paragraph 692, for the exemption from duty of all 'casts of plaster of Paris imported in good faith for the use of any society or institution incorporated or established for religious purposes.*"
>
> "Under the last named paragraph, it would appear that any *plaster cast, which shall be regarded by a religious society as a desir-*

able acquisition, and shall be classified by the Collector as coming within the terms of paragraph 677, may be imported free of duty without regard to its artistic character."

"The Department cannot interpret the provisions of paragraph 677 as establishing in any respect an æsthetic standard for such importations, and, without discussing the propriety of such standards, must administer the law according to its apparent intent."

Considering these decisions altogether, we find:

FIRST.—That such articles as those here in question have been held by the Treasury Department to be free as casts for more than a quarter of a century before the enactment of the present Tariff Act.

SECOND.—That the Treasury Department had decided that *they were not statuary* within the meaning of that term even before it was subjected to the limitation now imposed on it, and on which the Board of Appraisers lay so much stress.

THIRD.—That prior to the enactment of the present tariff the suggestion now urged by the Board of General Appraisers, that the free admission of articles of this character should be restricted to those which were of an expensive or artistic character, was expressly repudiated by the Treasury Department.

FOURTH.—That these views of the Treasury Department were not based merely on the claims or representations of importers, without the consideration of adverse arguments and in an apparently superficial manner, but were reiterated after the very author of the present decision had strongly urged upon the Treasury Department a contrary view.

These decisions were before Congress when the present act was drawn. The Treasury Department

had sharply called attention to the fact that the provision for "casts of plaster of Paris" did not contain any words indicating an artistic or æsthetic standard. There is no reason to doubt that in using the words "casts of sculpture" without qualification in paragraph 649 of the present act, Congress intended to continue the liberal policy referred to by the Department with reference to articles imported for churches. There is nothing in the paragraph to indicate any intention of Congress to reverse a long-settled policy.

That the intention of Congress was not to disturb existing conditions with regard to the importation of casts of sculpture for churches, but to leave that provision as it was, charged with the interpretation put upon it by the Secretary of the Treasury, is further emphasized by the proceedings in Congress at the time of the enactment of the law, which, while inadmissible for the purpose of contradicting the plain language of any statute, may always be resorted to for defeating any attempt to induce the courts to disregard the plain meaning of terms.

The Tariff Act of 1897, as originally passed by the House, omitted all provisions for the free introduction of philosophical and scientific apparatus, casts and similar articles for religious or educational societies. Whether this was an inadvertence or a deliberate act of omission can only be left to conjecture. The Finance Committee of the Senate restored in the act provisions corresponding with paragraphs 585 and 603 of the Tariff Act of 1894. One of these, providing for philosophical or scientific apparatus, was passed as originally proposed by the Finance Committee, and is now paragraph 638 of the Act of 1897. The one providing for regalia, statuary and casts, as originally proposed by the Finance Committee, reads as follows:

"Regalia and gems, statues, statuary and specimens or casts of marble, bronze, alabaster or plaster of Paris, where specially imported," &c.

On the 1st day of July, 1897, as appears by the *Congressional Record*, 55th Congress, 1st Session, Vol. 30, part III., p. 2538, Mr. Allison proposed the following amendment:

" In paragraph 622½ (which was the paragraph now constituting paragraph 649 of the Act as passed) line 8 after the word ' gems,' it is proposed to strike out the word ' statues.' In line 9, after the word ' specimens ' to strike out ' or casts of marble ' and insert ' of sculpture in,' and in the same line, after the words ' alabaster or ' to strike out ' plaster of Paris ' and insert ' wood,' so as to read:

" Regalia and gems, statuary and specimens of sculpture in bronze, alabaster or wood," &c.

The amendment was agreed to and the paragraph, as amended was agreed to. In this condition the bill passed the Senate. The Conference Committee, however, recast the paragraph in its present form, and in that form it passed both houses of Congress.

It thus appears that after attention had been called to this matter and it had been the subject of proceedings in the Senate by which the provision for casts was stricken out altogether, Congress on the report of its Conference Committee restored the provision for casts, not in the form which the Senate Finance Committee had originally given to it, but in the identical language of the corresponding paragraph in the Act of 1894.

The inference is irresistible that Congress intended to preserve the provision in the Act of 1894, as interpreted by the Treasury Department in the decisions heretofore quoted.

Casts imported for educational societies have been free of duty since 1816, and casts imported for churches were free of duty from 1861 to 1870 and from 1883 to the present time. The policy of according free admission to articles imported for churches is one which should be approved by the Courts, and the tendency of judicial decisions should

be to give such provisions a liberal interpretation, and not restrict their application by imposing qualifications and limitations which Congress, after having had its attention called to the matter, has seen fit not to impose.

The only effect of imposing such limitatioas as are suggested by the Board of Appraisers to the scope of this paragraph would be to accord free admission to fine works of art imported for wealthy churches, who could best afford to pay duty on them, and deny a similar privilege to the humbler devotional works imported for struggling churches, upon whom the burden of any duty would rest most severely.

In exempting from duty articles imported specially for the use of churches, Congress has simply continued a practice which, as we have seen, has prevailed for many years in our tariff legislation, and which is in line with legislation generally throughout the States, exempting church property from taxation. Congress has inserted in paragraph 649 of the present act a phrase not found in any act prior to that of 1894. It has expressly decreed that "casts of sculpture imported for churches shall be admitted free." If this term is to be subject to the definition or limitation put upon it by the Board of General Appraisers, then the legislation of Congress will be rendered practically nugatory, for such things as the Board of Appraisers would admit as casts of sculpture, to wit, sculptor's models, have never been and are never likely to be imported for the use of churches. So also, if these words are to be restricted, as the Circuit Court would seek to restrict them, to plain white statues, the legislation will be rendered practically nugatory, for such articles are rarely imported and will not answer the purpose of decorating churches.

To sum the whole matter up, the Customs officers, the Board of Appraisers and the Circuit Court have substantially united in destroying a privilege which Congress deliberately accorded to religious institu-

tions in accordance with a long and well-settled and eminently wise and benign policy, and we respectfully submit that they have all fallen into an error which we have a right to have corrected in this Court.

The decision of the Circuit Court of Appeals should be reversed and the articles held entitled to free entry under paragraph 649 of the Tariff Act of July 24, 1897, and the case remanded to the Circuit Court of Appeals, with instructions to enter a mandate in accordance with the decision of this Court.

Dated New York, November 16, 1903.

CHARLES CURIE,
W. WICKHAM SMITH,
Attorneys for Petitioners.

W. WICKHAM SMITH,
Counsel.

APPENDIX.

Free list provisions for casts imported for churches from 1861 to 1897.

ACT OF MARCH 2, 1861, SEC. 23.

"All philosophical apparatus, instruments, books, maps and charts, statues, statutary, busts and casts of marble, bronze, alabaster, plaster of Paris; paintings and drawings, etchings, specimens of sculpture, cabinets of coins, medals, regalia, gems, and all collections of antiquities: *Provided*, the same be specially imported in good faith, for the use of any society incorporated or established for philosophical, literary or religious purposes, or for the encouragement of the fine arts, or for the use or by the order of any college, academy, school or seminary of learning in the United States."

REVISED STATUTES OF 1874, PARAGRAPHS 1708 AND 1726.

"1708. Philosophical and scientific apparatus, instruments, and preparations, statuary, casts of marble, bronze, alabaster or plaster of Paris; paintings, drawings and etchings, specially imported in good faith for the use of any society or institution incorporated or established for philosophical, educational, scientific or literary purposes, or encouragement of the fine arts, and not intended for sale."

"1726. Regalia and gems, and statues and specimens of sculpture, where specially imported, in good faith, for the use of any society incorporated or established for philosophical, literary or religious purposes, or for the encouragement of the fine arts, or for the use or by the order of any college, academy, school or seminary of learning in the United States."

ACT OF MARCH 3, 1883, PARAGRAPHS 759 AND 771.

"759. Philosophical and scientific apparatus, instruments and preparations, statuary, casts of mar-

ble, bronze, alabaster, or plaster of Paris; paintings, drawings and etchings, specially imported in good faith for the use of any society or institution incorporated or established for religious, philosophical, educational, scientific or literary purposes, or encouragement of the fine arts, and not intended for sale."

"771. Regalia, and gems, statues, statuary and specimens of sculpture, where specially imported in good faith for the use of any society incorporated or established for philosophical, literary or religious purposes, or for the encouragement of the fine arts, or for the use or by order of any college, academy, school, seminary of learning, or public library in the United States."

ACT OF OCTOBER 1, 1890, PARAGRAPHS 677 AND 692.

"677. Philosophical and scientific apparatus, instruments and preparations; statuary, casts of marble, bronze, alabaster or plaster of Paris; paintings, drawings, and etchings, specially imported in good faith for the use of any society or institution incorporated or established for religious, philosophical, educational, scientific or literary purposes, or for encouragement of the fine arts, and not intended for sale."

"692. Regalia and gems, statues, statuary and specimens of sculpture, where specially imported in good faith for the use of any society incorporated or established solely for educational, philosophical, literary or religious purposes, or for the encouragement of fine arts, or for the use or by order of any college, academy, school, seminary of learning, or public library in the United States; but the term 'regalia' as herein used shall be held to embrace only such insignia of rank or office or emblems as may be worn upon the person or borne in the hand during public exercises of the society or

institution, and shall not include articles of furniture or fixtures, or of regular wearing apparel, nor personal property of individuals."

ACT OF AUG. 27, 1894, PARAGRAPHS 585 AND 603.

"585. Philosophical and scientific apparatus, utensils, instruments and preparations, including bottles and boxes containing the same; statuary, casts of marble, bronze, alabaster, or plaster of Paris; paintings, drawings and etchings, specially imported in good faith for the use of any society or institution incorporated or established for religious, philosophical, educational, scientific, or literary purposes, or for encouragement of the fine arts and not intended for sale."

"603. Regalia and gems, statues, statuary and specimens or casts of sculpture where specially imported in good faith for the use of any society incorporated or established solely for educational, philosophical, literary or religious purposes, or for the encouragement of the fine arts, or for the use or by order of any college, academy, school, seminary of learning, or public library in the United States, but the term 'regalia' as herein used shall be held to embrace only such insignia of rank or office or emblems as may be worn upon the person or borne in the hand during public exercises of the society or institution, and shall not include articles of furniture or fixtures, or of regular wearing apparel, nor personal property of individuals."

ACT OF JULY 24, 1897, PARAGRAPHS 638 AND 649.

"638. Philosophical and scientific apparatus, utensils, instruments, and preparations, including bottles and boxes containing the same, specially imported in good faith for the use and by order of any society or institution incorporated or established solely for religious, philosophical, educational, scientific or literary purposes, or for the encouragement

of the fine arts, or for the use or by order of any college, academy, school or seminary of learning in the United States, or any State or public library, and not for sale, subject to such regulations as the Secretary of the Treasury shall prescribe."

"649. Regalia and gems, statuary, and specimens or casts of sculpture, where specially imported in good faith for the use and by order of any society incorporated or established solely for religious, philosophical, educational, scientific, or literary purposes, or for the encouragement of the fine arts, or for the use and by order of any college, academy, school, or seminary of learning in the United States, or any State or public library and not for sale; but the term 'regalia' as herein used shall be held to embrace only such insignia of rank or office or emblems as may be worn upon the person or borne in the hand during public exercises of the society or institution, and shall not include articles of furniture or fixtures, or of regular wearing apparel, nor personal property of individuals."

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

BENZIGER BROS., PETITIONERS,
v.
THE UNITED STATES, RESPONDENTS. } No. ——.

PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES IN OPPOSITION.

The only question in this case is whether decorated figures of plaster and other like materials, known as "Station of the Cross," are casts of sculpture; whether such "plaster casts" are "casts of sculpture."

The Board of General Appraisers (Rec., p. 12), after receiving ample testimony which brought out commercial designation and art as well as trade understanding, held in a carefully considered opinion that these figures or groups are *not* casts of sculpture. The board considered the method of manufacture by manifold reproductions from a mold as a mechanical business rather than an art, and compared this process with the careful and artistic treatment of those plaster of paris models of statuary which are known in commerce and in art as casts of sculpture.

The opinion of the circuit court (Townsend, J., p. 76) reflects careful analysis of the subject, and sus-

tains the Board of General Appraisers, finding that it was not the intention of Congress to permit churches, colleges, and historical societies to import free their interior decorations in the plastic art under this guise; and, in effect, that elaborate painting and other decoration, with certain accessories natural to the ecclesiastical subjects portrayed, but not consistent with "casts of sculpture," as that phrase is usually and properly employed, prevent these figures from being classified as such casts. The circuit court of appeals affirmed and adopted the opinion of the circuit court.

I respectfully submit that no case, thus passing from the executive assessment of duty through the three tribunals of review provided by the law, could well be presented in which fewer reasons drawn from the gravity and novelty of the question, conflict in decisions, or general concern in the issue are to be offered for avoiding the application here of the rule that the decision of the circuit court of appeals in most customs cases ought to be final, as it was meant to be. It is perhaps proper to add that the theory of this rule is becoming more rigidly established in current practice and in the judgments of this court. While, in general, such free-list provisions as that presented are entitled to liberal construction in favor of religion or learning, that argument ought not to be heard here against the fairness and reasonableness of the unanimous conclusions of the tribunals below.

JOHN K. RICHARDS,
Solicitor-General.

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In the Supreme Court of the United States.

OCTOBER TERM, 1903.

NICHOLAS C. BENZIGER ET AL., petitioners, *v.* THE UNITED STATES. } No. 54.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES.

I.

STATEMENT.

This cause is before the court on writ of certiorari to the United States circuit court of appeals for the second circuit. Review and reversal is asked of the judgment of that court affirming a judgment of the United States circuit court for the southern district of New York which sustained the decision of the Board of General Appraisers overruling the protest of Benziger Brothers and approving the classification by the collector of goods consigned to them.

In 1899 Benziger Brothers entered at the port of New York a number of figures representing

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sacred subjects, imported for the use and by order of certain societies established for religious purposes. The appraiser returned them as "church statues composed of plaster of Paris decorated," and the collector assessed upon them a duty of 35 per cent ad valorem under paragraph 450 of the tariff act of July 24, 1897. The importers protested against this action, claiming the articles were exempt from duty under paragraph 649 of the free list of said act as "casts of sculpture imported in good faith by order and for the use of a society incorporated for religious purposes." This protest was submitted to the Board of General Appraisers who, after taking evidence, overruled the same and sustained the action of the collector. (Rec., p. 14.) A petition was filed in the United States circuit court for the southern district of New York asking review of this decision. The cause was there heard on the record sent up by the Board of General Appraisers, and its decision was affirmed December 22, 1900. (107 F. R., 257.) The importers prayed and perfected an appeal to the circuit court of appeals for the second circuit, which court affirmed the judgment of the court below, apparently without filing a written opinion. (Rec., p. 63.)

The articles in controversy are figures representing St. Anthony, St. Vincent de Paul, and adoring angels. They are about 5 feet 6 inches in height and are molded of "carton pierre," a substance composed of whiting, chalk, or similar mineral

substance, thin fibrous paper, glue, and water or oil mixed and boiled together and kneaded like dough or putty to the requisite consistency. They are painted white and otherwise decorated and ornamented for the purpose of giving them the semblance of life.

The Board of General Appraisers found as facts (Rec., pp. 9 et seq.):

> (1) That the articles in question are of a class known in commerce, in art, and to customs officers, in 1897, and long prior thereto, as "statuary," specially as "church statuary." (Rec., p. 9.)
>
> (2) That they are not sculptured or produced by professional sculptors from models of their creation, but are made in molds like statuettes, vases, ornaments, and other articles of china, bisque, and earthenware, by artisans in industrial establishments. (Rec., p. 9.)
>
> (3) That they are uniformly described in the illustrated catalogues and trade circulars of manufacturers and dealers as "statues" and as "statuary," and are so designated in invoices and correspondence; they are bought and sold with varying trade discounts, as commercial articles, the price depending largely upon the component material and size, but chiefly upon the painting and decoration, which consists in giving flesh tints to the exposed parts of the body, natural coloring to the eyes, ears, and beard, and the desired colors and ornamentation to the drapery and accessories. The painting

and decoration constitute the more artistic and attractive features of the articles and generally form the chief element of cost and market value. (Rec., p. 10.)

(4) That these particular figures are composed of "carton pierre," and are produced as follows:

"The clay model of the subject of desired size is covered by a workman with a coating some 2 inches thick of plaster of Paris. When this coating has set or hardened sufficiently, the clay figure inside is broken up and removed, and a plaster of Paris mold thereof thus obtained. The plaster is then carefully forced into this mold, and when dry is taken out in the form of the original clay figure. This plaster figure, after having been carefully gone over by an artist or skilled workman to cure any defects in the molding, is in turn thoroughly covered with specially prepared plaster for the final mold. This is made in *sections*, which when dry are removed, and together form a perfect mold, and this composite *mold* becomes the manufacturer's substitute for the artist's clay or *plaster cast model* from which he (the manufacturer) produces his molded statues in unlimited numbers. In the molding process the several sections of the mold are in turn laid with the concave side upward, and have a lining of 'carton pierre' one-half inch or more in thickness, carefully laid and pressed into them by the molder's hands with the aid of suitable tools. The extended arms, fingers,

and other slender parts are strengthened by pieces of iron wire laid in the 'carton pierre,' which is then lined either with heavy paper or coarse-woven vegetable fiber cloth secured with glue. After the 'carton pierre' has dried sufficiently, the several sections of the mold are removed and their contents joined together around a framework of wood, and a figure is thus formed, the counterpart of the original model. The statue then goes to a skilled workman, called a 'finisher,' who, with knife or other instrument, removes any roughness resulting from the joining of the sections, cures any other defects in the molding, and smooths it down generally. It is then passed to the painter and decorator who completes it in the style desired." (Rec., pp. 10, 11.)

(5) That professional sculptors reproduce in plaster of Paris their original creations in clay for permanent use as models, from which the final product in marble, stone, or other material is sculptured. Such plaster of Paris models are known as "casts of sculpture" (Rec., p. 11), and are not painted or decorated, nor are they dealt in as ordinary commercial articles. Casts in plaster of Paris are likewise produced from rare objects of sculpture, generally for use in museums or art institutes, but sometimes for reproduction of the original by sculptors in marble or stone, and these are also called "casts of sculpture." (Rec., p. 12.)

It is conceded that if the imported articles are dutiable at all they were correctly classified by the collector. Protestants contend that sculpture is any work carved or fashioned by the hand of man into the semblance of any object; that the figures are "casts of sculpture"—that is, molded from a piece of sculpture—and should have been admitted free under paragraph 649, free list of the tariff act of 1897, and upon the proper construction of those terms the decision of the cause must rest.

The circuit court, in affirming the decision rendered by the Board of General Appraisers (Rec., p. 57), among other things said:

> Counsel for the importers contends that inasmuch as these articles are cast and are copies of sculptured objects, they are, in fact, casts of sculpture, and that, as no trade designation is involved, the testimony of professional sculptors is inadmissible to show the meaning of said term. But in this case the peculiar phraseology of the statute requires that the court should inquire as to the classes of articles included under the broad term "casts of sculpture," in order to determine which would be appropriate for such importations for religious or literary societies. In its broadest sense "casts of sculpture" might be so perverted as to embrace, for example, an india-rubber doll.
>
> It is not necessary, however, in the disposition of this case to determine whether such objects if imported in their rude state

would be free of duty under said paragraph. They have been advanced by the skill of the artist from a mere manufacture from composition to be a completed decorative object. Not only have the figures themselves been elaborately painted and gilded, but in two of the exhibits original paintings have been made showing sky and clouds, temples, arches, and other decorations entirely independent of the figure itself. To one of the exhibits there has also been added a piece of twine simulating the rope used by soldiers in their infliction of tortures upon the Savior. The faces have been painted so as to suggest the sentiments of the actors, and paint simulating drops of blood has been applied to the forehead of the figure of the Savior. Such objects are not "casts of sculpture." (Rec., p. 57.)

II.

PROVISIONS OF LAW, DEFINITIONS, AND TREASURY DECISIONS.

The following from the several tariff acts, beginning with the Revised Statutes, show the course of legislation:

REVISED STATUTES, 2d Ed., 1878, pp. 478, 487–8.

Schedule M.

(P. 478.) Paintings and statuary, not otherwise provided for: ten per centum ad valorem. But the term "statuary," as used in the laws *now in force imposing duties* on foreign importations, shall be understood to include professional productions of a statuary or of a sculptor only.

(P. 487.) (Free list.) Philosophical and scientific apparatus, instruments, and preparations, statuary, *casts of marble, bronze, alabaster*, or *plaster of Paris*, paintings, drawings, and etchings, specially imported in good faith for the use of any society or institution incorporated or established for philosophical, educational, scientific, or literary purposes, or encouragement of the fine arts, and not intended for sale.

(P. 488.) (Free list.) Regalia and gems, and *statues and specimens of sculpture*, where specially imported in good faith, for the use of any society incorporated or established for philosophical, literary, or religious purposes, or for the encouragement of the fine arts. * * *

ACT OF MARCH 3, 1883. (22 STATS., CH. 121.)

(P. 513.) Paintings, in oil or water colors, and statuary not otherwise provided for, thirty per centum ad valorem. But the term "statuary," as used in the laws *now in force imposing duties* on foreign importations, shall be understood to include professional productions of a statuary or of a sculptor only.

(P. 520.) (Free list.) Par. 759. Philosophcal and scientific apparatus, instruments, and preparations, *statuary, casts of marble, bronze, alabaster, or plaster of Paris*, paintings, drawings, and etchings, specially imported in good faith for the use of any society or institution incorporated or established for religious, philosophical, educational, scientific or literary purposes, or encouragement of the fine arts, and not intended for sale.

(P. 520.) (Free list.) Par. 771. Regalia and gems, *statues, statuary, and specimens of sculpture*, where specially imported in good faith for the use of any society incorporated or established for philosophical, literary, or religious purposes. * * *

ACT OF OCTOBER 1, 1890. (26 STATS., CH. 1244.)

(P. 602.) Par. 465. Paintings, in oil or water colors, and statuary, not otherwise provided for in this act, fifteen per centum ad valorem; but the term "statuary," as *herein* used shall be understood to include only such statuary as is cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone, or alabaster, or from metal, and as is the professional production of a statuary or sculptor only.

(P. 608.) (Free list.) Par. 677. Philosophical and scientific apparatus, instruments, and preparations; *statuary, casts of marble, bronze, alabaster, or plaster of Paris;* paintings, drawings, and etchings, specially imported in good faith for the use of any society or institution incorporated or established for religious, philosophical, educational, scientific, or literary purposes, or for encouragement of the fine arts, and not intended for sale.

(P. 609.) (Free list.) Par. 692. Regalia and gems, *statues, statuary, and specimens of sculpture*, where specially imported in good faith for the use of any society incorporated or established solely for educational, philosophical, literary, or religious purposes * * *.

ACT OF AUGUST 27, 1894. (28 STATS., CH. 349.)

(P. 542.) (Free list.) Par. 575. Paintings, * * * and statuary, not otherwise provided for in this act, but the term "statuary" as *herein* used shall be understood to include only professional productions, whether round or in relief, in marble, stone, alabaster, wood, or metal, of a statuary or sculptor. * * *

(P. 543.) (Free list.) Par. 585. Philosophical and scientific apparatus, * * * *statuary, casts of marble, bronze, alabaster, or plaster of Paris*, paintings, drawings, and etchings, specially imported in good faith for the use of any society or institution incorporated or established for religious, philosophical, educational, scientific, or literary purposes, or for encouragement of the fine arts, and not intended for sale.

(P. 544.) (Free list.) Par. 603. Regalia and gems, *statues, statuary, and specimens or casts of sculpture*, where specially imported in good faith for the use of any society incorporated or established solely for educational, philosophical, literary, or religious purposes * * *.

ACT OF JULY 24, 1897 (THE PRESENT ACT). (30 STATS., CH. 11.)

(P. 194.) Par. 454. Paintings, * * * and statuary, not specially provided for in this act, twenty per centum ad valorem; but the term "statuary" as *used in this act shall* be understood to include only such statuary as is cut, carved, or otherwise wrought by hand from a solid block or mass of marble

stone, or alabaster, or from metal, and as is the professional production of a statuary or sculptor only.

(P. 200.) (Free list.) Par. 638. Philosophical and scientific apparatus, utensils, instruments, and preparations, including bottles and boxes containing the same, specially imported in good faith for the use and by order of any society or institution incorporated or established solely for religious, philosophical, educational, scientific, or literary purposes, or for the encouragement of the fine arts, or for the use or by order of any college, academy, school, or seminary of learning in the United States, or any State or public library, and not for sale, subject to such regulations as the Secretary of the Treasury shall prescribe.

(Note the omission of the terms "*statuary*," *casts of marble, bronze, alabaster, or plaster of Paris.*)

(P. 201.) (Free list.) Par. 649. Regalia and gems, *statuary, and specimens* or *casts of* sculpture, where specially imported in good faith for the use *and by order* of any society incorporated or established solely for religious, philosophical, educational, scientific, or literary purposes, or for the encouragement of the fine arts, * * * and not for sale; * * *

Lexicographers have defined the terms to be considered as follows:

CENTURY DICTIONARY.

STATUE, *n.* A figure of a person or an animal, made of some solid substance, as marble, bronze, iron, or wood, or of any substance of solid appearance; a sculptured, cast, or molded figure, properly of some size and in the round.

STANDARD DICTIONARY.

CAST, *n.* An object founded or run in or as in a mold, as of metal, plaster, wax, etc.

SCULPTURE, *vt.* To carve or grave out of stone, wood, or metal; fashion by carving or graving in or on stone, wood, or metal, or by casting in metal; as, to *sculpture* a statue.

SCULPTURE. *n.* 1. The art of fashioning figures out of stone or other solid material by carving or chiseling, or of modeling them in some plastic substance, for subsequent reproduction by carving or by casting, as in bronze; also, sometimes, the art of engraving gems or medals. Sculpture is that free branch of the fine arts that imitates natural objects, chiefly the human body, by representing in solid form their true proportions, either in all three dimensions or in those of length and breadth only. It is either (1) *sculpture proper*, where the proportions of all three dimensions are reproduced, or (2) *relief*, where that of thickness or depth is relatively reduced. The latter approaches

painting in effect. (See Art.) The modern sculptor usually models his work in moist clay, which in the case of a large statue is supported by a skeleton framework. If the work is to be in marble a plaster cast is then taken from this model, and a copy of it is made by a skilled workman, the sculptor generally putting on the finishing touches.

2. Any work carved or fashioned in or on stone, wood, metal, clay, or other material; carved work, as a sculpture on a tomb.

STATUARY. *n.* Statues, collectively considered; as, Greek *statuary*.

STATUE. *n.* A plastic work representing a human or animal figure, generally in marble or bronze; especially such a work nearly life-size or large as distinguished from *statuette*, and preserving the proportion in all directions as distinguished from *relief*.

(See also the Century and Webster's International dictionaries.)

SYNOPSES OF TREASURY DECISIONS.

The officers in charge of customs in the decisions following have construed provisions in the aforementioned statutes.

Synopsis of Treasury decision No. 5549.

January 25, 1883. This decision related to certain images of saints and allegorical characters, made of some earthen substance, which were produced at Munich, several copies being made from

one model. The importer claimed in this protest they were dutiable under the provisions for "statuary" and it appears they were generally known at that time as "church statuary" and were obviously works of skillful men. The claim of the importer was allowed.

This ruling is here referred to in order to show that images of the class mentioned therein were known as "church statuary" at that time.

Treasury decision No. 7274, December 22, 1885.

Application for the free admission of three cases of so-called statues imported in September, 1885, for St. Joseph's Church, Willimantic, Conn. The Department held:

> While under numerous decisions of the Department these figures are clearly not *statuary* within the meaning of paragraph 771 of the free list, yet if the figures are, as claimed, *casts* of the character named in paragraph 759 of the free list, to wit, casts of bronze, alabaster, or plaster of Paris, or assimilate thereto in material, quality, and texture, the Department concurs in your view that under the provisions of section 2499, Revised Statutes, and of paragraph 759, as aforesaid, they would be entitled to free entry when "specially imported in good faith for the use of a society or institution incorporated or established for religious purposes * * *."

Treasury decision No. 11747, September 10, 1891.

Concerning the proper classification of figures imported in May, 1891, and claimed to be free of duty as "statuary" or as "casts of plaster of Paris" imported for a church, under paragraph 677 (act of 1890), or as "statues," "statuary," or "specimens of sculpture," under paragraph 692, the Department ruled: The question is involved in doubt, but in view of the decision that the restrictive definition of "statuary" in paragraph 465 does not apply to such statuary as is specified in the free list, it is believed that the crude or inartistic character of the figures under consideration can not be urged as a reason for their exclusion from the benefits of free entry.

Treasury decision No. 13936, April 26, 1893.

This decision was rendered in reply to a communication from the president of the Board of General Appraisers regarding the classification of "so-called plaster statuary" as entitled to free admission under paragraph 677 of the act of 1890.

The communication pointed out that the merchandise consisted of products of a certain large manufacturer and exporter of church statuary, images, etc., who was consigning large quantities of the so-called statuary to the United States and securing free entry of the same upon affidavits of clergymen and others as if imported for the use of a particular church, and not for sale; and that such manufacturer had an agent canvassing

for orders for such goods, which having been received and the necessary certificate obtained, they were shipped from stock at Montreal. The advantages which a foreign dealer thus enjoyed over regular home importers who paid duty was clearly pointed out and an argument was made to show that free entry should be extended only to "the inspired creations of the artist," and denied to "the works of the artisan or mechanic, the products of the factory or the workshop." The Treasury adhered to former opinions and held that the restrictive definition of "statuary" contained in paragraph 465 (act of 1890) did not apply to paragraph 677, although such definition was implied in paragraph 692, and that as paragraph 677 exempted from duty without limitation all casts of plaster of Paris imported in good faith for the use of any society or institution incorporated or established for religious purposes, the figures in question were entitled to such admission.

III.

ARGUMENT.

The paragraph of the free list in the Revised Statutes (2d ed., p. 487) providing for "statuary, casts of marble, bronze, alabaster, or plaster of Paris," did *not* admit such articles free when imported *for the use of* a society for *religious* purposes. What may be called the "Regalia and gem" paragraph (R. S., 2d ed., p. 488) admitted free of duty "Regalia and gems and statues

and specimens of sculpture when specially imported in good faith for the use of any society incorporated or established for philosophical, literary, or religious purposes * * *." Protestants assert that "casts imported for churches have been free of duty since 1861." If this be true they must have been classed under the Revised Statutes as "statues." "Casts of sculpture," under which designation it is now sought to import them, was not contained in the law then in force, and "casts of marble, etc.," imported for churches were not free of duty.

The tariff act of 1883, and those subsequent thereto down to that of 1897, provided for free admission of "*statuary, casts of marble, bronze, alabaster, or plaster of Paris*" imported for *use of* a religious society.

In the act of 1894, paragraph 603, the term "casts of sculpture" first appears in the free list; and free admission is also given to "*statuary, casts of marble, bronze, alabaster, or plaster of Paris,*" by paragraph 585, as in former acts.

The act of 1897 omits the terms, "*statuary, casts of marble, bronze, alabaster, or plaster of Paris*" from the section of the free list in which they had appeared together since the Revised Statutes. They do not appear in paragraph 638, which corresponds to those in former acts providing for such articles, nor in any similar paragraph, and, manifestly, were of a purpose stricken out. Paragraph

649, act of 1897, differs from the corresponding paragraphs in former tariff acts (603, act of 1894; 692, act of 1890; 771, act of 1883, p. 488, R. S.), in that the word "statues" is omitted in the former, and to permit the free importation of articles named it is therein made necessary, not only that they be imported for the use of, but also *by order* of a society of the kind specified.

The definition of "statuary" in the various acts has undergone marked changes. In acts of 1890 and 1894 the definition given seems to apply (and Treasury officials so held) only to the paragraph in which it appears, while in the act of 1897 the definition applies wherever the word is used in the statute.

The Treasury Department, construing the act of 1883, ruled (T. D., 7274), December, 1885, that what appear to be such figures as those in question were clearly not "statuary" within the meaning of paragraph 771, but if, as *then claimed*, they were *casts* of some material designated in paragraph 759 they could be admitted free under that section. This ruling excluding such figures from the terms of paragraph 771 has been adhered to, and of course was well understood by the framers of all laws of subsequent date.

The Secretary of the Treasury (T. D., 11747), September 10, 1891, replying to the contention that certain sacred figures made of plaster were subject to duty under the provisions of the act of 1890, held that as the restrictive definition of "statuary"

in paragraph 465 had been construed "not to apply to such statuary as is specified in the free list," the crude and inartistic character of the figures offered could not be successfully urged as adequate reason for their exclusion from free entry.

This opinion, it must be noted, was arrived at as the result of a construction under which the restrictive definition of statuary did not apply to the free list at all.

In April, 1893 (T. D., 13936), a forcible argument for the exclusion from free entry of plaster statuary was presented to the Treasury Department and special attention was directed to the fact that the business of resident importers and dealers, who sold from stock and paid duty, was seriously interfered with by such entry of these articles for use of churches. In its decision the Department ruled that under paragraphs 692 and 465 of the act of 1890 "objects exempted from duty should be of such a high order as to inspire admiration and devotional feeling, elevate the taste, educate and improve the mind, encourage fine art, and administer generally to the higher faculties of mankind," but that under paragraph 677 these requirements were not necessary, and any plaster cast regarded by a religious society as a desirable acquisition might be imported thereunder free of duty. This decision also was based upon a construction which excluded the terms of the statutory definition of "statuary" from application to paragraph 677; and by it the injustice of

permitting foreigners to send church statues into the country free, in competition with citizens who were endeavoring to sell similar figures, after having paid the duties imposed thereupon, was made quite plain.

In *Tutton* v. *Viti* (1882), 108 U. S., 312, and *Merritt* v. *Tiffany* (1889), 132 U. S., 167, there were before this court questions involving the definition of "statuary" contained in Schedule M, Revised Statutes, section 2504 (p. 478). In the first case the court decided that reproductions of statues made by a professional sculptor came within the definition; and in the latter case, that if the evidence showed the imported articles were not made by professional sculptors or statuaries, or their assistants under their direction, but by workmen or mechanics in the employ of a manufacturer, they did not come within the provisions of the definition.

The evidence introduced before the Board of General Appraisers in the present case (Rec., pp. 39–51) shows establishments in the United States where articles of the same general character of those in question are manufactured, and that owners of such plants would have serious cause to complain of free importation of products of foreign manufactories seeking a market here in competition with domestic goods. With full knowledge of the rulings of the Treasury Department up to that time, of the injustice which had been permitted to resident importers who paid full duty

under the terms of former acts, and the competition encountered by manufacturers in the United States from foreign factories employing cheap labor, Congress evidently had a definite purpose to meet the difficulties when the act of 1897 was passed, and to accomplish this end the modifications of the provisions of former laws, above pointed out, were presumably made. The definition of "statuary" was so changed as to make it apply to all parts of the act; the terms "*statuary, or casts of marble, bronze, alabaster, or plaster of paris*" were omitted and the additional provision was added, in section 449, requiring that the articles should be imported "by order of" a religious society. These changes meant something, and it is fair to conclude they were introduced for the purpose of correcting objections to former legislation which had been made apparent. If the contention of the protestants is sustained, these changes will produce no adequate effect, for if "casts of sculpture" has the wide meaning contended for, much, if not everything, that was admitted free before the act of 1897 as "casts of marble, bronze, alabaster, or plaster of paris" will now be admitted as "casts of statuary."

For many years the rulings of the Treasury Department have excluded from provisions similar in terms to pargraph 649, act of 1897, when the restrictive definition of "statuary" applied to the same, such figures as those in question, and the framers of the act of 1897 intended to entirely

exclude them from the free list by not inserting in paragraph 638 the terms "*statuary, casts of marble, bronze, alabaster, or plaster of Paris,*" under which designation they had been admitted free.

The evidence before the Board of General Appraisers, and its findings, show that the terms "casts of sculpture" have two well-understood meanings. Artists understand a "cast of sculpture" to be a solid figure of plaster of paris, modeled from an original clay design and used as an intermediary for the final production of a statue in marble, bronze, or other hard substance. These terms are also applied to a reproduction in plaster of notable artistic figures, which reproductions are used for educational purposes, and sometimes to enable a sculptor to make a statue similar to the original. But casts of this character are never painted or decorated and are not articles of ordinary commerce. Moreover, the cast is always regarded as but a poor substitute for the original sculptured figure, and there is no expectation that it shall be looked upon as anything else. In the language of artists, such figures as those being considered are not known as "casts of sculpture." Dealers testified that such figures were commonly known as "statues," "statuary," or "church statuary," and are so designated in the catalogues issued by those in the trade, and are never spoken of or known as "casts."

It is proper to assume that Congress intended the terms of the tariff act of 1897 relating to art objects to be construed either according to the general understanding of men engaged in buying and selling them, or in harmony with the usages of artists. Neither class understood the terms "casts of sculpture" to mean what the protestants claim for it. Moreover, as such figures were known in trade as "statuary," with the evident purpose of making it clear that they were not to be imported free under such designation, Congress so defined that term in the act of 1897 as to eliminate all doubt of its applicability to them.

> Congress must be understood to use the word in its known commercial sense. The object of the duty laws is to raise revenue and for this purpose to class substances according to the general usage and known denominations of trade. * * * It applied its attention to the description of articles as they derived their appellations in our own markets, in our domestic as well as our foreign traffic, and it would have been as dangerous as useless to admit any other classification than that derived from the actual business of human life.
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> *200 Chests of Tea*, 9 Wheaton, 430.
>
> *Lutz* v. *Magone*, 153 U. S., 107.
>
> *United States* v. *Buffalo Gas Fuel Co.*, 171 U. S., 341.

It appears from definitions of "sculpture," "statue," and "statuary" given by standard dictionaries that "sculpture" is the broad term and includes "statue," so that every statue is, in fact, a piece of sculpture. "Statue," by the Century Dictionary, is defined to be, "A figure of a person or an animal made of some solid substance, marble, bronze, iron, or wood, or of any substance of solid appearance; a sculptured, cast, or molded figure, properly of same size and in the round." The original clay model from which the present figures were evolved by the process above described, if an article of sculpture at all, was a statue, according to the well-understood definition thereof; and any cast made therefrom would necessarily be a cast of a statue. The restrictive definition contained in paragraph 454, tariff act of 1897, provides:

> The term "statuary" as used in this act shall be understood to include only such statuary as is cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone, or alabaster, or from metal, and as is the professional production of a statuary or sculptor only.

Under such definition the original clay model was not a piece of statuary within the meaning of paragraph 649, and would not have been entitled to enter the United States as one of the articles specified in the free list. As the original clay model was not such statuary or sculpture as that defined and given free entry by the act of 1897,

clearly no cast of that figure could be admitted free. It seems obvious that the Congress never intended to permit the free entry of a cast of a thing which itself was not entitled to such entry.

Paragraph 649, act of 1897, provides for "statuary and specimens or casts of sculpture." If "sculpture," as used in that paragraph, be interpreted in its broadest sense and without reference to the word "statuary," which precedes it, such interpretation would entirely destroy the limitations imposed on the word "statuary" by paragraph 454, and the result would be to permit the free entry of the very articles intended to be excluded by such definition. No such construction of the statute can be deemed worthy of serious consideration.

The protestants maintain that the articles in question are not only the *casts of sculpture* which have been recognized for many years as entitled to free admission under provisions in the tariff laws corresponding with the one now under consideration, but, as is well known, they are the only kinds of casts of sculpture that would be imported for the use of religious societies; and they accordingly insist that free entry should have been granted in the present instance.

In reply to this I respectfully suggest that no such articles as those under consideration have ever been held to be free from duty under provisions in any tariff law like those contained in the

act of 1897. It is true figures of like kind were admitted under former acts wherein the provisions were radically different, but for the express purpose, apparently, of excluding them the modifications pointed out above were made in the act of 1897. Attention is also directed to the fact that religious societies constitute only one of a great class intended to be benefited by permitting the free importation of many kinds of art subjects; and while a restricted definition of the articles to be imported may result in excluding some things which might be of use to a church, it may admit objects of great value to other societies. Moreover, casts are not *the only things useful to a church* provided for in the paragraph.

The figures now seeking free admission are in no proper sense "casts of sculpture," but are simply articles manufactured in large numbers by cheap laborers, the starting point of which was a crude clay figure, not intended for the ordinary uses of statuary, but only as a temporary model from which to ultimately develop such objects. They have been built up around a wooden framework, and were without value for use as religious objects until painted and decorated at an expense perhaps larger than their first value, and by a general finishing process of this character made presentable. If these objects are "casts of sculpture," then, as fittingly suggested by the circuit

judge, a rubber doll manufactured by a similar process is likewise a cast of sculpture, as indeed would be any object cast in molds made from an original figure fashioned by the hand of man into the semblance of anything upon the earth. It is no answer to this argument to suggest that a rubber doll can not be used by a religious society, since the free list is not alone intended for the benefit of such societies; nor was there a design to admit everything free which such a society might use.

For the purposes of this case it does not seem absolutely necessary to determine whether, if wholly undecorated, the figures could have been properly designated as "casts of sculpture," for they have, by the fashioning hand of the painter, been advanced from crude objects of comparatively small value into their present state, and their value thereby has been greatly enhanced. In a certain sense a rude piece of canvas upon which an artist has executed a valuable picture is still canvas; but it would seem absurd to contend that the custom officers should classify such a completed production as "woven fabric," and admit the same under the provisions of the law relating thereto. If these figures were ever in a state when they could have been properly classified as "casts of sculpture" they were removed therefrom by the process through which they have gone. Having become something else, they must be so classed.

THE UNITED STATES RESPECTFULLY ASKS THAT THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS BE IN ALL THINGS AFFIRMED.

JAMES C. MCREYNOLDS,
Assistant Attorney-General.

WASHINGTON, *November, 1903.*

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Supreme Court of the United States.

No. 54.—October Term, 1903.

Nicholas C. Benziger et al., Petitioners, vs. The United States. } On writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[January 4, 1904.]

Certain figures representing various saints, and also two figures of adoring angels, as specified in the collector's letter to the board of general appraisers, were, in March, 1899, specially imported into the port of New York in good faith, for the use and by the order of societies incorporated or established solely for religious purposes. The importers claimed the figures were entitled to free entry under paragraph 649 of the tariff act of 1897. (30 Stat. 151, 201.) The appraiser returned them as "church statues, composed of plaster of Paris, decorated," or as "articles and wares composed wholly or in chief value of earthy or mineral substances, not specially provided for," and the collector assessed upon them a duty of 45 and 35 per cent *ad valorem* under paragraphs 97 and 450 of the same act, (pages 156, 193.) If dutiable, no question is made as to the correctness of the decision of the collector in assessing the duties as he did. The contention is that these figures were "specially provided for" in this act under the paragraph above mentioned, 649.

The importers protested against the decision of the collector and the case went to the board of general appraisers. Testimony was taken by the board and it found as a fact the manner in which the figures were made, which was as follows:

"The clay model of the subject, of desired size, is covered by a workman with a coating some two inches thick of plaster of Paris. When this coating has 'set' or hardened sufficiently, the clay figure inside is broken up and removed, and a plaster of Paris mould thereof thus obtained. Plaster is then carefully forced into this mould, and when dry is taken out in the form of the original clay figure. This plaster figure, after having been carefully gone over by an artist or skilled workman to cure any defects in the moulding, is in turn thoroughly covered with specially prepared plaster for the final mould. This is made in sections, which when dry are removed, and together form a perfect mould, and this composite mould becomes the manufacturer's substitute for the artist's clay or plaster cast model from which he (the manufacturer) produces his moulded statues in unlimited numbers. In the moulding process the several sections of the mould are in turn laid with the concave side upward, and have a lining of 'carton pierre,' one-half inch or more in thickness, carefully laid and pressed into them by the moulder's hands with the aid of suitable tools. The extended arms, fingers and other slender parts are

strengthened by pieces of iron wire laid in the 'carton pierre,' which is then lined either with heavy paper or coarse woven vegetable fiber cloth secured with glue. After the 'carton pierre' has dried sufficiently, the several sections of the mould are removed and their contents joined together around a framework of wood, and a figure is thus formed, the counterpart of the original model. The statue then goes to a skilled workman called a 'finisher,' who, with knife or other instrument, removes any roughness resulting from the joining of the sections, cures any other defects in the moulding, and smooths it down generally. It is then passed to the painter and decorator, who completes it in the style desired. The statues in 'carton romain' and in 'stone composition' are made in the same manner, except that the latter are uniformly lined with coarse cloth. The stations of the cross in 'carton pierre' and in terra cotta are produced in substantially the same way (those in terra cotta, however, being kiln dried or baked after moulding), and are painted and decorated in quite the same manner as the statues, the foreground and other landscape or perspective effects being painted in suitable tints or hues."

The protest was overruled by the board, and a petition for a review was duly filed by the importers (petitioners) and the case heard in the Circuit Court, Southern District of New York, and that court affirmed the decision of the board. (107 Fed. 257.) An appeal was taken to the Circuit Court of Appeals, where the decision of the Circuit Court was affirmed on the opinion of the court below. Upon petition of the importers a writ of certiorari was issued from this court and the case brought here for review.

Mr. Justice Peckham, after making the foregoing statement of facts, delivered the opinion of the Court.

The petitioners claim that the figures in question here are entitled to free entry under the provision of paragraph 649 of the tariff act of 1897, (30 Stat. 151, 201,) as being "casts of sculpture, where specially imported in good faith for the use and by the order of any society incorporated or established solely for religious, philosophical, scientific, educational or literary purposes," &c. The board of appraisers thought that on July 24, 1897, the day of the passage of the tariff act, and for many years prior thereto, those figures belonged to a class which was known in commerce, in art and to the classifying officers of customs of the United States as "statuary," and specifically as "church statuary." In the opinion of the board it was stated:

"It is the practice of professional sculptors to have their original creations in clay reproduced in plaster of Paris for permanent use as models from which the objects are sculptured in marble, stone or other material. The sculputor invariably goes over his plaster cast with utmost care, not only repairing any defects in the moulding, but defining more accurately the hair, finger nails, folds of the drapery and outline generally, and, above all, perfecting the facial and general expression. These plaster of Paris models are known in commerce and in art as 'casts of sculpture.' They represent the artist's right and title to his creation, and unlike the merchan-

dise in question here, are not painted and decorated, nor dealt in as ordinary commercial articles. Casts in plaster of Paris are likewise produced from rare objects of sculpture, generally for use in museums or art institutions, but sometimes for reproduction by sculptors in marble, stone, &c., and are also called 'casts of sculpture,' but are in strict sense 'casts *from* sculpture,' being cast from plaster of Paris from sculptural objects, such, for example, as the high relief frieze of the Parthenon at Athens, the facade of the guild of the Butchers house at Hildesheim, the tomb of Englebert, and other works in the Metropolitan Museum of Art mentioned in the testimony of Messrs. Stoltzenberg and Trueg."

The board was of opinion that these figures were what is known in commerce, in art and in common speech as "statuary," and were not "specimens or casts of sculpture," and were therefore assessed, as stated.

If these figures were to be entered as statuary, they would come in free under paragraph 649 of the act of 1897, but for the limitation contained in paragraph 454, which limits the term "statuary," as used in the act, so as to "include only such statuary as is cut, carved or otherwise wrought by hand from a solid block of marble, stone, alabaster or other metal, and is the professional production of a statuary or sculptor only." The Circuit Court did not regard it necessary in the disposition of the case to determine whether these particular figures would come in free as casts of sculpture under paragraph 649, if imported in the crude state, but held that as the figures had been painted and gilded, they were not thereafter casts of sculpture within the meaning of the act.

Upon the argument of this case at bar frequent reference was made by counsel to the provisions in former tariff acts upon this subject, as bearing upon the proper construction of the one under consideration. For convenience these provisions are reproduced in the margin as they existed in the act of 1861, (12 Stat. 178, 193;) the Revised Statutes, (sec. 2205, pp. 482, 487, 488;) the act of 1883, (22 Stat. 488, 514, 520;) the act of 1890, (26 Stat. 567, 608, 609;) the act of 1894, (28 Stat. 509, 543, 544;) and in the present act of 1897, (30 Stat. 151, 201.)*

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*Act of March 2, 1861, Sec. 23. (12 Stat. 178.)

All philosophical apparatus, instruments, books, maps and charts, statues, statuary, busts and casts of marble, bronze, alabaster, plaster of Paris; paintings and drawings, etchings, specimens of sculpture, cabinets of coins, medals, regalia, gems, and all collections of antiquities: *Provided*, The same be specially imported in good faith, for the use of any society incorporated or established for philosophical, literary or religious purposes, or for the encouragement of the fine arts, or for the use or by the order of any college, academy, school or seminary of learning in the United States.

Revised Statutes of 1874, Sec. 2505, Paragraphs 1708 and 1726, pp. 482, 487. (16 Stat. 256, 268.)

1708. Philosophical and scientific apparatus, instruments, and preparations,

An examination of the provisions of the various statutes shows a somewhat uniform purpose on the part of Congress to provide free entry to casts of marble, bronze, alabaster or plaster of Paris, and also statuary and specimens of sculpture, when specially imported in good faith for the societies enumerated in the acts. It is also seen that under the language used in these different paragraphs, which may be described as the "philosophical and scientific," and the "regalia and gems" paragraphs, some article might be admitted under either paragraph. There is no doubt that under the tariff acts prior to that of 1897, these figures could have been admitted free of duty, as "casts of plaster of Paris." Indeed, the Treasury Department had so decided in a case hereafter cited. Those words, "casts of marble, bronze, alabaster, or plaster of Paris," which appear in all the statutes cited prior to 1897, in the philosophical apparatus paragraphs, are left out in the act of 1897, paragraph 638, and it is therefore urged that the figures are not entitled to free entry, as they are not casts of sculpture, provided for in paragraph 649. The question is, therefore, whether the omission of those words in paragraph 638 prevents the free entry of these figures, or are they properly described as casts of sculpture, and therefore entitled to free entry under paragraph 649.

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statuary, casts of marble, bronze, alabaster or plaster of Paris; paintings, drawings and etchings, specially imported in good faith for the use of any society or institution incorporated or established for philosophical, educational, scientific or literary purposes, or encouragement of the fine arts, and not intended for sale.

1726. Regalia and gems, and statues and specimens of sculpture, where specially imported, in good faith, for the use of any society incorporated or established for philosophical, literary or religious purposes, or for the encouragement of the fine arts, or for the use or by the order of any college, academy, school or seminary of learning in the United States.

Act of March 3, 1883. (22 Stat. ch. 121, pp. 488, 514, 520.)

(P. 514.) Paintings, in oil or water colors, and statuary not otherwise provided for, thirty per centum ad valorem. But the term "statuary," as used in the laws now in force imposing duties on foreign importations, shall be understood to include professional productions of a statuary or of a sculptor only.

(P. 520.) (Free list.) Par. 759. Philosophical and scientific apparatus, instruments, preparations, statuary, casts of marble, bronze, alabaster or plaster of Paris, paintings, drawings and etchings, specially imported in good faith for the use of any society or institution incorporated or established for religious, philosophical, educational, scientific or literary purposes, or encouragement of the fine arts, and not intended for sale.

(P. 526.) (Free list.) Par. 771. Regalia and gems, statues, statuary, and specimens of sculpture, where specially imported in good faith for the use of any society incorporated or established for philosophical, literary or religious purposes.

Act of October 1, 1890. (26 Stat. ch. 1244, pp. 567, 608, 609.)

(P. 602.) Par. 465. Paintings, in oil or water colors, and statuary, not otherwise

We do not attach any very great importance, as evidence of the intention of Congress, to the omission in the act of 1897 above referred to. The language used in paragraph 649 is very broad, including all casts of sculpture, as well those heretofore mentioned in paragraphs in prior statutes similar to paragraph 638 as others. The omission in the latter paragraph was, therefore, immaterial if these figures are casts of sculpture. Although they might heretofore have come in under the designation of "casts of plaster of Paris" as contained in former paragraphs, we think they also might have come in under the designation "casts of sculpture" contained in the act of 1894 as well as in the act of 1897, and that it was not intended by Congress, in omitting the words in the latter act as to casts of plaster of Paris, in paragraph 638, to prevent their free entry under paragraph 649. The language in paragraph 638 was simply unnecessary in a case where the same articles were entitled to free entry under another paragraph.

In attempting to understand the true construction of the words used in the act of 1897 we are not very greatly aided by the opinions given by various artists called by the government and contained in this record, as

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provided for in this act, fifteen per centum ad valorem; but the term "statuary," as herein used, shall be understood to include only such statuary as is cut, carved or otherwise wrought by hand from a solid block or mass of marble, stone or alabaster, or from metal, and as is the professional production of a statuary or sculptor only.

(P. 608.) (Free list.) Par. 677. Philosophical and scientific apparatus, instruments and preparations; statuary, casts of marble, bronze, alabaster or plaster of Paris; paintings, drawings and etchings, specially imported in good faith for the use of any society or institution incorporated or established for religious, philosophical, educational, scientific or literary purposes, or for encouragement of the fine arts, and not intended for sale.

(P. 609.) (Free list.) Par. 692. Regalia and gems, statues, statuary and specimens of sculpture, where specially imported in good faith for the use of any society incorporated or established solely for educational, philosophical, literary or religious purposes. . . .

Act of August 27, 1894. (28 Stat. ch. 349, pp. 509, 543, 544.)

(P. 542.) (Free list.) Par. 575. Paintings, . . . and statuary, not otherwise provided for in this act, but the term "statuary" as herein used shall be understood to include only professional productions, whether round or in relief, in marble, stone, alabaster, wood or metal, of a statuary or sculptor. . . .

(P. 543.) (Free list.) Par. 585. Philosophical and scientific apparatus, . . . statuary, casts of marble, bronze, alabaster or plaster of Paris, paintings, drawings and etchings, specially imported in good faith for the use of any society or institution incorporated or established for religious, philosophical, educational, scientific or literary purposes, or for encouragement of the fine arts, and not intended for sale.

(P. 544.) (Free list.) Par. 603. Regalia and gems, statues, statuary and speci-

to what was the proper designation of the figures. These opinions varied, although based upon conceded facts as to the manner and process by which the figures were produced. According to some of them there were but two kinds of "casts of sculpture;" one where professional sculptors have their own original creations of clay reproduced in plaster of Paris for permanent use as models and from which objects are sculptured in marble, stone or other material; and the other, where casts in plaster of Paris are produced from rare objects of sculpture, generally for use in museums or art institutes. Some regarded the term "sculpture so wide that it was difficult to define definitely," although they thought that the figures in question were not casts of sculpture, while some regarded casts of sculpture "as such classes of plaster casts or clay or marble or bronze as are to stand singly and alone, and not be sold in endless numbers, and to be exhibited temporarily in some exhibition." We think the last definition is inaccurate and inadmissible. Under this view, whether a figure is a cast of sculpture or not, does not in the least depend upon how it is made. It is the use to which it is destined which is to determine what it is in fact. If there are to be a great many of them, to be "sold in endless numbers," they are not casts of sculpture, no matter how they are made, and if they are to "stand singly" and "be exhibited temporarily" then they are such casts. We are not satisfied as to the correctness or completeness of this definition.

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mens or casts of sculpture, where especially imported in good faith for the use of any society incorporated or established solely for educational, philosophical, literary, or religious purposes. . . .

Act of July 24, 1897, (the present act.) (30 Stat. ch. 11, pp. 151, 201.)

(P. 194.) Par. 454. Paintings, . . . and statuary, not especially provided for in this act, twenty per centum ad valorem; but the term "statuary" as used in this act shall be understood to include only such statuary as is cut, carved or otherwise wrought by hand from a solid block or mass of marble, stone or alabaster, or from metal, and as is the professional production of a statuary or sculptor only.

(P. 200.) (Free list.) Par. 638. Philosophical and scientific apparatus, utensils, instruments and preparations, including bottles and boxes containing the same, specially imported in good faith for the use and by order of any society or institution incorporated or established solely for religious, philosophical, educational, scientific or literary purposes, or for the encouragement of the fine arts, or for the use or by order of any college, academy, school or seminary of learning in the United States, or any State or public library, and not for sale, subject to such regulations as the Secretary of the Treasury shall prescribe.

(P. 201.) (Free list.) Par. 649. Regalia and gems, statuary, and specimens or casts of sculpture, where specially imported in good faith for the use and by order of any society incorporated or established solely for religious, philosophical, educational, scientific or literary purposes, or for the encouragement of the fine arts, . . . and not for sale; . . .

Whether in one case the cast is for the use of the sculptor only or in the other is destined to be reproduced indefinitely, we think is not material. They are made in the same manner, reproduced from clay, and the same means or process is taken or employed in obtaining the result. Whether the clay model is the work of the superior genius of a great sculptor or is the result of the efforts of one who could not be classed as a genius at all, they are both fashioned in the same way and the same process is followed with regard to both, and we do not think that in this statute there was any intention to confine the meaning to casts of those clay figures which were fashioned by the hand of genius, while excluding those of inferior artists or workmen. The witnesses are not, however, all of one mind, even upon the meaning of the term. Some thought that these were casts of sculpture in a certain sense as long as they remained simply plaster casts, but just as soon as additional touches were given to the casts, in the way of paint or ornamentation, the casts lost their original character as plaster casts and became statuary in wood or alabaster or bronze. At any rate, it would cease to be an article of clay and would become a finished thing. Just as soon as a cast of sculpture was painted it would in the opinion of some of the witnesses cease to be a cast of sculpture.

Some of the artists said that you might take a cast of old sculpture, such as the *Venus de Milo*, and different antiques and reproduce them in plaster, and they would be casts of old sculpture. But whether the figures in question here were casts of sculpture, some of the witnesses were not sure.

One witness for the government gave as his opinion that the figures in question were casts or specimens because they are sculpture. As to whether they were cast or moulded, he replied that he could not state definitely, but presumbably they were casts.

Another witness for the government was not willing to swear that the figures were not casts of sculpture, while still another said that in his judgment the figures in question were plaster casts in sculpture. He also thought that they might be termed casts of sculpture. Another witness for the government thought they might be called casts of bad sculpture, and that they were such articles as he had heard artists call casts of sculpture.

This brief review of some of the evidence shows the difference of opinion among the artists themselves as to what would come within their understanding of the definition of the term "casts of sculpture." The artists evidently had a contempt for the figures as specimens of art, and very probably that contempt was well founded; but, as we have said, the opinions really give no aid in considering whether the figures are or are not casts of sculpture. The description of the manner in which they are made, as set forth in the foregoing statement of facts, and also the evidence of the witnesses

for the government, showing the unity of the method and process with that followed in the case of an admitted cast of sculpture, furnish us better means of determining the question in dispute than may be found in the opinions set forth in the record, and yet some of the witnesses do in fact, as we have seen, admit that the figures are casts of sculpture, bad though they may be.

The government also examined one or two witnesses who were agents or salesmen for manufacturers in this country of what they stated to be substantially the same class of figures as the ones under discussion, and in their catalogues describing the various articles for sale, figures such as these were generally designated as "statuary," and when taking orders for such goods they were called "statuary" or "composition statues."

One of the customs examiners also testified that for the last few years articles of the nature here in question had been returned on invoices to the collector as "church statuary composed of plaster, decorated, or pulverized cement and plaster." The witness used the expression "church statuary composed of" as having been given him by some superior officer, and it was accepted by him as such.

It will be observed that there is nothing in the tariff act which speaks of "church statuary" by name. We are not satisfied from this evidence that these figures are not casts of sculpture within the meaning of the statute, nor are we impressed with the statement of some of the witnesses that if in what is termed their crude state these figures might or would be described as casts of sculpture, they would cease to be such when painted or decorated. They are still, in substance, the same thing, whether painted or not. How does the mere gilding or painting alter their original character? Some little value has perhaps been added to them, but they yet remain what they were before the painting was done. Painting a marble statue does not alter its original substance, or give the subject a new definition or meaning. Some marble statues, the work of a great sculptor, have been slightly painted under his own direction for the purpose, as supposed, of imparting a more lifelike appearance to the statue, and of possibly thereby enhancing its value. But the statue remained a statue nevertheless.

It is so, as we think, in this case. The painting or gilding was done to render the figures more fit for the only purpose of their importation—that is, for use in a religious society. And it was the object, as we believe, of the statute to admit such works free of duty.

In case No. 5549, Synopsis of Decisions of the Treasury Department, 1883, p. 41, it was said that the case related to certain images made of earthen substances which on importation were subjected to duty at the rate of forty per centum *ad valorem*, but were claimed in the protest filed to be dutiable at the rate of ten per centum *ad valorem*, under the provisions for

"statuary" contained in schedule M, Revised Statutes, p. 478, under heading "Paintings and Statuary;" the word "statuary," being defined as limited "to include professional productions of a statuary, or of a sculptor only." It appeared on the trial that the images were made at Munich by persons who professed to have made a study of the art of sculpture for many years and who acted under the general supervision of an acknowledged sculptor. Several copies were made from one model, and in ordering them the importer designated which he wanted by the number of the article in a catalogue, and the price of the images varied from five to a hundred dollars.

The Circuit Court for the Southern District of New York held that the articles were entitled to admission as statuary under the provision above mentioned, and the department acquiesced in the opinion of the court. In that case the department was of opinion that the works were obviously made by skillful men, and might come in even under the limititation of the word "statuary" as defined in the act.

It cannot be and is not claimed that the figures in question here could come in under the term "statuary," as that term is defined in the statute of 1897, paragraph 454, which is much more narrow than that of the Revised Statutes. The case shows, however, the tendency of the department to a liberal construction of the tariff act in this regard.

On December 22, 1885, (Synopsis of Decisions of the Treasury Department, 1885, p. 513, No. 7274,) the question was submitted as to whether figures similar to those under consideration were entitled to free admission under the act of 1883. The department held that they could not be regarded as "statuary" because of the limitation of the meaning of the word "statuary," as used in that act, (22 Stat. 513,) which provided that the word "statuary" "should be understood to include professional productions of a statuary or of a sculptor only," but that they might be admitted as casts of plaster of Paris under paragraph 759 of the free list. Paragraph 771 did not contain the words "casts of sculpture."

In Synopsis of Decisions, Treasury Department, July to December, 1891, vol. 2, p. 1164, there is contained a reply to the naval officer of New York relative to the proper classification of certain figures imported and claimed to be free of duty as statuary or as casts of plaster of Paris, imported for a church under paragraph 677, or as statues, statuary or specimens of sculpture, under paragraph 692 of the tariff act of 1890. The Acting Secretary referred to the fact that the board of general appraisers had held that the restrictive definition in regard to "statuary" under paragraph 465 did not apply to such statuary as is specified in the free list. The language of that paragraph (465) the board held limited its definition of the term "statuary" to that paragraph alone. Continuing, the Secretary said:

"The department believes that the crude or inartistic character of the figures under consideration cannot be urged as a reason for their exclusion from the benefits of free entry. It is fair to infer a liberal intention on the part of Congress from the fact of its inclusion of religious institutions among those to which the privilege of free entry is extended. Religious institutions are not schools of art, nor can congregations without adequate means always consult esthetic rules in regard to the equipment of their churches. It is the sentiment of pious associations which gives the figure its efficiency as an aid to religious worship, and the plaster cast may in this way be as serviceable to the humble worshiper as the more costly work of genius."

The subject was again before the Treasury Department on April 26, 1893. (Synopsis of Decisions, Treasury Department, 1893, p. 340.) As appears upon its face the letter of the Secretary was in reply to a communication from the board of general appraisers, protesting against the free entry of articles of this nature under the act of 1890, because of the advantages thus given to the foreign dealer in these figures, some of whom had a store in Montreal, although the figures were manufactured in Munich, and the order was supplied from the Montreal store, and the board insisted that the figures were not entitled to such entry by the true construction of the statute. The Secretary, in reply, referred to what the board stated to have been the evident intention of Congress in the act that the "objects exempted from duty should be of such high order as to inspire admiration and devotional feeling," &c., and held that the views of the board might "apply to paragraphs 692 and 465, but not to paragraph 677, which provides (with the restriction enumerated in paragraph 465 and implied in paragraph 692) for the exemption from duty of all casts of plaster of Paris imported in good faith for the use of any society or institution incorporated or established for religious purposes."

It was further stated that "the department cannot interpret the provisions of paragraph 677 as establishing in any respect the esthetic standard for such importations, and without discussing the propriety of such standard must administer the law according to its apparent intent." Also: "Under the last named paragraph (677) it would appear that any plaster cast which should be regarded by a religious society as a desirable acquisition, and shall be classified by the collector as coming within the terms of that paragraph, may be imported free of all duty without regard to its artistic character."

Looking at the various provisions in the tariff statutes, from and including 1861 to and including that of 1897, and taking into consideration the evidence in the record in this case, together with the action of the Treasury Department, as above referred to, the answer to the question of what is the true meaning or construction of the words "casts of sculpture," as used in the statute of 1897, is not perfectly clear. Some fair reason might,

perhaps, be given for a construction which refuses free entry to these figures, but we think that the purpose of Congress was to permit their introduction free of duty as casts of sculpture, when specially imported in good faith for the use and by the order of any of the institutions named in the act. The paragraph in question (649) makes it necessary not only that the casts of sculpture should be specially imported in good faith for the use of a society, but it must be so imported *by the order* of such society. Here for the first time it is made necessary that the importation must have been *by order* of the society, which words are a still further limitation of the conditions upon the existence of which free entry is permitted.

It may well be that when the act of 1897 was drawn, its framers had in mind the objections above mentioned, made by the board of general appraisers, and therefore further limited the right of free entry to a special importation in good faith for the use *and by order* of the society, and to that extent protecting the interests of the "regular importers who sell from stock," while at the same time recognizing the policy of permitting a free entry to those societies who in good faith ordered the articles for their own special use.

We are of opinion that the evidence does not justify the assertion that the articles in question were simply known in a commercial sense as "statuary" or "church statuary." The fact that figures of this nature were designated as statuary in a catalogue of a manufacturer in this country does not clearly or conclusively establish such commercial designation. They were also designated composition statues by the salesman when taking orders for them. If the articles were also known as "casts of sculpture," and such language correctly described them, then they would come within the statute, although some manufacturers in this country should, for purposes of a short and easy description, describe them in the catalogues as "statuary," or "composition statues." It seems to us they answer the description of casts of sculpture and are properly described as such in the act.

This provision of the statute should be liberally construed in favor of the importer, and if there were any fair doubt as to the true construction of the provision in question the courts should resolve the doubt in his favor. (*American Net & Twine Company* v. *Worthington*, 141 U. S. 468; *United States* v. *Wigglesworth*, 2 Story, 369; *Rice* v. *United States*, 53 Fed. Rep. 910.)

The judgments of the Circuit Court of Appeals of the Second Circuit and of the Circuit Court in the Southern District of New York are reversed, with directions to the Circuit Court to reverse the decision of the board of general appraisers and of the collector, and to direct the collector to admit the figures to free entry.

So ordered.